PROVINCE OF ALBERTA

REPORT

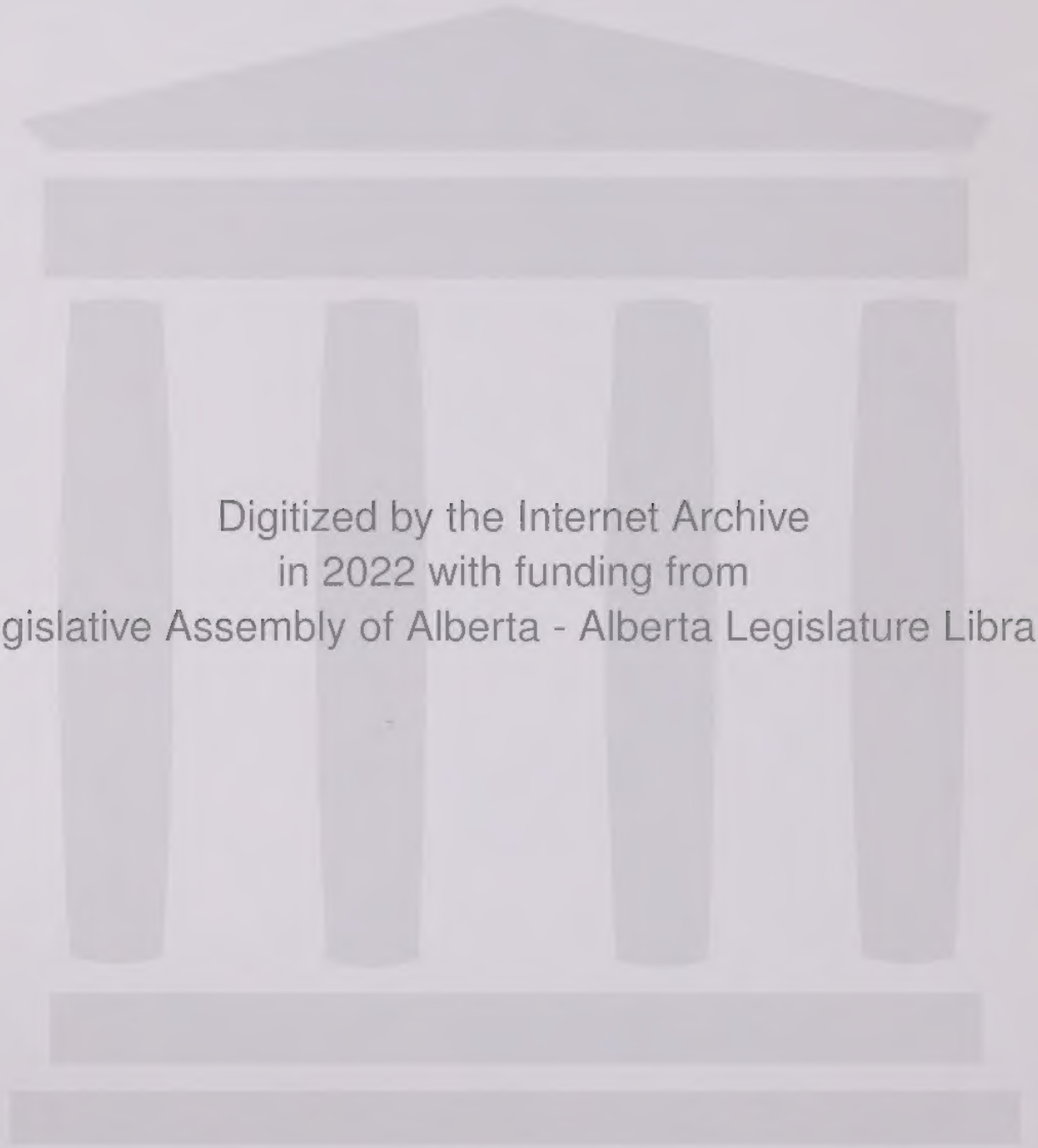
OF THE

OMBUDSMAN

FOR THE PERIOD JANUARY 1 - DECEMBER 31, 1968

PRESENTED TO THE LEGISLATURE
PURSUANT TO SECTION 26(1) OF
THE OMBUDSMAN ACT

Printed by LEE S. WALL, Printer of the Queen's Most Excellent Majesty
EDMONTON, ALBERTA
1969



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MR. SPEAKER:

I have the honour to submit my second report since assuming the Office of Ombudsman for the Province of Alberta. This report covers the period from January 1 to December 31, 1968, inclusive.

Cases Handled — 1967

At the close of the calendar year 1967, I reported that of the complaints received during that year, 97 were either still under investigation, or awaiting investigation. One previously concluded case was reopened, making a total of 98. These cases have now been disposed of as follows:

Under investigation	16
Workmen's Compensation Board	16
No Jurisdiction	14
Rectified	17
Abandoned	7
Declined	2
Not Justified	22
Withdrawn	4
TOTAL	98

There were 39 complaints where the investigation was completed, being the sum of those "Not Justified" and those "Rectified." This figure excludes those which are under "Investigation" or where I had "No Jurisdiction," or were "Abandoned", "Declined" or "Withdrawn" during the investigation. It will be seen that the complaints "Rectified" of those completed, were approximately 45 per cent.

The single largest category of unfinished investigations in 1967, is that against the Workmen's Compensation Board. It will be remembered from last year's report, that all investigations of complaints against the Board were discontinued, due to a ruling of the Appeal Court of Alberta in a civil matter, that the Workmen's Compensation Board was not an Agency of the Government of the Province of Alberta.

The Legislature amended The Ombudsman Act to bring the Workmen's Compensation Board within the Ombudsman's jurisdiction. The amendment came into force on April 25, 1968.

Following this amendment, it became necessary to contact each complainant again, and give him the opportunity to reopen his complaint, and again submit the documentary evidence that had been returned to him.

Investigation of complaints against the Workmen's Compensation Board has been necessarily slower than in most other categories, and I shall comment on this point later in my General Comments.

Disposition of the 1967 concluded cases is shown in Appendix I.

Cases Handled — 1968

During the calendar year 1968, 535 complaints were received. The totals by months are as follows:

January	56
February	37
March	75
April	74
May	49
June	48
July	26
August	24
September	29
October	46
November	41
December	30
TOTAL	535

Of the total number of complaints received in 1968, it was found that in 186 of them, the Ombudsman had no jurisdiction, leaving 349 cases requiring investigation or further action. (See Appendix II).

Cases Investigated

Of the 349 cases in which the Ombudsman had jurisdiction, 58 were found to be "Not Justified," and the complainants were so advised. Again this year, a number of the complainants were not satisfied with this decision, as was to be expected.

Twenty-five cases were "Abandoned" by the complainant during investigation. This abandonment was usually in the form of letters being forwarded to the complainant asking for further information, and no reply being received. There were a small number where the complainants had moved, and these were usually transient cases, where mail was returned "Address Unknown."

Eleven cases were "Withdrawn" by the complainant before the investigation was completed. These included such cases as persons who found that they could get their complaint rectified without further action by the Ombudsman.

Eighty-two cases were "Declined" by the Ombudsman for any of the several reasons where a discretion or prohibition is included in The Ombudsman Act. Of these 82, the largest number of complaints declined was against the Workmen's Compensation Board.

This latter group were usually declined where preliminary investigation showed that there were further avenues of appeal to the Board, open to the complainant which he had not pursued. I was therefore required to decline to continue such investigation by the Act.* Frequently the complainant was unaware that such avenues of appeal were open to him until advised by the Ombudsman.

Seven cases were discontinued for such reasons as a transfer in the category of the complaint from one Department to another, or where the Ombudsman, at

* Section 12(1) (a)

his discretion, may decide that there is some other adequate remedy; or that having regard to all the circumstances of the case, no further investigation is necessary.**

Four cases were disposed of by referring the complainant to a specific Department or other Agency. These were usually cases where the complainant has made an initial complaint to the Ombudsman, without first having properly laid the complaint before the Department or Agency concerned, or where the complainant has made a request for information rather than making a genuine complaint. In such cases he was advised to make his initial request to the Department or Agency responsible.

There were five cases of sufficient importance to be the subject of a file, where the writer sought the help of the Ombudsman in such things as bringing a case to Court, obtaining Legal Aid, appealing to a Federal Government Department and so on. In such cases, the complainant was referred to sources where he could obtain the information he needed, or the information was provided him by the Ombudsman's Office.

There were a considerable number of other requests of this nature received throughout the year, which were dealt with by telephone, or did not require a record.

There were 126 cases categorized as "Investigation." This category includes cases under actual investigation; cases where additional information is being sought to establish jurisdiction; and cases where the investigation has been completed, and the report and recommendation to the Minister and Department are under preparation, or awaiting a reply.

The total number of complaints which were concluded to a point where the Ombudsman arrived at an opinion, as provided for in the Act,*** is the sum total of the complaints "Rectified," and the complaints "Not Justified," namely 89. This figure leaves aside those cases which are still under investigation.

Of the 89 cases referred to, 31 were rectified, which is slightly better than one third. It is gratifying to note that to date, there is no concluded case, where the recommendation of the Ombudsman has not resulted in the complaint being rectified.

Summaries of a number of the cases appear at the end of this report (Appendix III). Such summaries will illustrate the wide variety of complaints received. They also demonstrate the manner in which some Departments of Government are more complained against than others.

It would be a mistake to judge the performance of Departments or Agencies solely on the number of complaints registered against them. It is most likely that the functions and responsibilities of one Department, are such as to make it more the natural target of criticism from the public than many other Departments.

Departments in such fields as Welfare, Justice, Highways, Lands and Forests, Health; and Agencies such as the Workmen's Compensation Board, whose actions are most likely to affect the daily lives of the public, will be more complained against than, for instance, the Provincial Library, against which I have had no complaint whatsoever.

In my last report, I warned against judging the statistics therein, as indicating a pattern, due to the fact that the report only covered four months of

** Section 14(1) (a) and (b)
*** Section 20

the operations of the Ombudsman's Office. I think now that it can be anticipated the trend wil be somewhat along the lines I have just mentioned above.

There is nothing as yet to indicate any decrease in the volume of complaints being received. Except for the summer months when the nation-wide postal strike was on, the numbers have remained reasonably constant.

In the first months of my office, a large number of very old complaints were revived and brought to my attention, some of them dating back over thirty years. In the past year, however, the incoming complaints have become more current, and with the odd exception, I think the period of having to deal with very ancient complaints is over.

At the same time, however, there is a notable increase in the number of complaints received, which are of so complicated a nature as to require lengthy investigation. As will be seen from the statistics, there are some cases from 1967 which are not yet completed. In a number of these cases, there are voluminous files which must not only be read, but thoroughly studied. It has been necessary to obtain transcripts of evidence of cases long concluded, or "Enquiries" terminated some years ago. There are also a significant number of cases, where the files of two or more Departments must be examined and discussed with the officials of those Departments.

It follows that a number of these investigations will take weeks or even months to complete. The result is, that from time to time, a considerable backlog of complaints awaiting investigation will build up. None the less, the quality of investigation must never be sacrificed in favour of quantity.

The text of the Sections of The Ombudsman Act referred to throughout this report, is included in Appendix IV.

Organization and Work of the Office

At the conclusion of the calendar year 1967, when I commenced preparing my report for that year, my staff consisted of one Secretary. In January, 1968, a Stenographer was added to the staff. In March, 1968, the first Investigator was appointed. Until his arrival, I had been carrying out all investigations myself and was rapidly losing ground.

In May, I was most fortunate in the appointment of a Solicitor to the Office of the Ombudsman in the person of Mr. A. B. Weir. Mr. Weir's previous career had been, not only in private practice, but as Solicitor to several Departments of the Provincial Government. His knowledge of the operations of Government and the Provincial Statutes has been of great value, particularly when it is realized that this office is not an office of specialists. It must be prepared to deal with Provincial Statutes, Regulations and Policies as they affect any and every Department or Agency of the Government of Alberta.

In September, an additional Investigator and an additional Stenographer completed the authorized staff.

It will be seen, that for almost half a year, the staff was not large enough to cope with the volume of work.

The number of complaints still under investigation or awaiting investigation at the end of 1968, is still considerably higher than it should be. I shall watch this situation carefully in the coming year, for, as I stated in my last report, I regard prompt investigation of complaints a prime requirement of the Ombudsman's Office.

It will be noted that this report is considerably longer than the previous one for 1967.

As has been indicated to me, it is the desire of the Legislators that my report for the calendar year should be available for tabling in the Legislature during the next Session. This means the books are closed on December 31st. Preparation of the actual report is begun, so that it may be printed and then tabled in the Legislature during the next Session, which usually commences about mid-February.

The task was not too difficult last year, as the report covered only four months, but the 1968 report required approximately one month for printing alone, before which the statistics must be classified, the summaries written and edited, and the general remarks thought out and committed to paper.

I must confess that the preparation of this report strained our resources greatly, in view of the fact that there was approximately one month to prepare the report and have it in the hands of the printers. At the same time, we had to maintain the flow of daily work.

I therefore propose, if you agree, to terminate the working year in 1969 on the 31st October. Such termination date should give ample time for the preparation of the report and its printing, so that it could be tabled in the Legislature early in the next Session. Thereafter, the work year for the submission of the Ombudsman's report would be from November 1st to October 31st of the following year.

There is a requirement for a moderate increase in staff, which is provided for in the Estimates.

It may be two or more years before any useful average of the approximate annual number of complaints can be forecast. My Office must respond to the volume of complaints which are received. My Office should have some budgetary and staff flexibility, to deal with any sudden unpredictable increase of complaints. Such flexibility will be particularly essential during the first few formative years, until some flow of work patterns is established.

It is to be hoped that in a very few years, any increase in the volume of complaints, would reflect only the normal growth of population or new areas of Legislation.

Publicity

I have given approximately 25 public addresses on the functions and duties of the Ombudsman's Office, and I am committed for a considerable number of further talks throughout the Province in 1969.

I have given several short television interviews, and two of considerable length in Edmonton and Calgary. As time permits, I would hope to extend these talks to many other areas in the Province so that the citizens of this Province may have a better idea of the function of the Ombudsman. The complaints crossing my desk, which are completely outside my jurisdiction, indicate that there is need for such publicity.

Additionally, I attended a short Seminar of the Mid-America Assembly at the University of Saint Louis, Missouri. The subject of the Seminar was "Ombudsman for America." I was able to learn much of the problems, which must be overcome in the establishment of the office of Ombudsman in such a highly populated country as the United States.

At the invitation of Dr. Frederick D. Lewis, Dean of the School of Law at the University of Miami, I was privileged to be the guest speaker at the School of Law Annual Alumni Breakfast during the University Homecoming Weekend. My subject was "The Work of the Ombudsman of the Province of Alberta." I had the pleasure of meeting members of the Judiciary, The University Faculty, and the State Legislature who were present.

I also lectured on the subject of the Ombudsman to a class on Government at the same University, and was privileged to sit in an afternoon discussion with members of the International Law Society of the Law School. As a result of this visit, I have been able to provide copies of The Ombudsman Act of Alberta, and my First Report, to a considerable number of interested officials who requested them.

I am receiving a fairly steady flow of requests for information concerning the work of the Ombudsman in this Province, from Universities in Canada and the United States. I have had some particular requests from Universities in the United States, where there are faculties teaching Canadian History, and the Organization and Operation of Canadian Government. I have also had requests for information and publications from legal authorities in Germany and Switzerland. There can be no doubt that interest in the role of the Ombudsman generally, is on the increase.

Legislation authorizing an Ombudsman for the Province of Quebec has been passed, although as this report is written, the position has not yet been filled. This appointment will be the third in Canada.

Acknowledgments

I have continued correspondence on matters of mutual interest with Dr. W. T. Ross Flemington, the Ombudsman for New Brunswick. I have just recently received copies of his first report, a copy of which I have forwarded to you.

The Publicity Bureau of the Department of Industry and Tourism, has been most helpful in providing me with clippings of comment on the function of my own office, and the Ombudsman generally.

Research

The following short courses were attended by the Solicitor to the Ombudsman's Office and the Senior Investigator:

Aspects of Social Functioning:	(Solicitor
	(Senior Investigator
Leadership and Supervision in the Social Agency	(Senior Investigator

The modest reference library in the office is being added to, as books of particular interest become available.

As will be seen elsewhere in this report, both the Solicitor, Mr. Weir, and myself have done considerable study on the question of the detention of the person, particularly with regard to persons detained in mental hospitals, both in Alberta and elsewhere.

Legislation

The problem which was reported in my last report, whereby the Chief Justice of the Appeal Court of Alberta had held that the Workmen's Compensa-

tion Board was not an Agency of the Government, was resolved by amendment to The Ombudsman Act, passed at the last Session of the Legislature.* The amendment makes the Workmen's Compensation Board an Agency of the Government for the purposes of The Ombudsman Act.

Again this year, we have run into no serious problems in the interpretation of the existing Ombudsman Act. At the same time I would repeat what I said last year, that a number of the Sections have not as yet been thoroughly tested, and it may be that in another year, I would wish to recommend some minor amendments.

So far I have found that the present Act gives me ample scope to carry out my investigations, and as I have received full co-operation from Government Departments in most of my investigations, there has been a lack of conflicting views which might bring certain Sections of the Act under scrutiny as to their interpretation.

During the past year, my attention has been drawn on several occasions to The Administrative Procedures Act, being Chapter 1 of the Statutes of Alberta, 1966.

It is not unusual for complainants to suggest that they have had less than a fair hearing, or more often, that they have not been given sufficient reason for decisions which have been taken by an "authority" as defined in that Act.

It was, in endeavouring to ascertain what policy or statutory authority existed on these questions, that I reviewed The Administrative Procedures Act. I was particularly drawn to Sections 4, 5, 6, 7 and 8. Wider application of, and adherence to the particular Sections mentioned in the Act, by Boards, Tribunals and other authorities could, in my view, eliminate a considerable volume of the particular type of complaint referred to.

In one instance, when I was informed that a certain Board did not have to give reasons for its decisions, I enquired further to ascertain to what particular "authorities" The Administrative Procedures Act applied. Section 3 of that Act reads as follows:

> 3. The Lieutenant-Governor in Council may, by order,
>
> (a) designate any authority as an authority to which this Act applies in whole or in part,
>
> (b) designate the statutory power of the authority in respect of which this Act applies in whole or in part, and
>
> (c) designate the provisions of this Act which are applicable to the authority in the exercise of that statutory power, and the extent to which they apply,
>
> and this Act only applies to any authority to the extent ordered under this section.

It will be seen that the Act applies only to those "authorities" which have been particularly designated by the Lieutenant-Governor in Council. My further enquiries revealed that only one "authority" had been so designated, and that "authority" is a Board consisting of one member.

With respect, I submit that a more generous application of the provisions of this Act could have a beneficial effect in reducing the type of complaint I have referred to. It would also provide a yardstick, against which the validity of such complaints could be measured when they are received.

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* Section 2(a)

While perhaps not properly a matter of Legislation, I have had some cause for concern as to the manner in which Form PAO 5, Employee Performance Rating Form, is used.

This is a form which is used generally throughout the Public Service to report on the progress, ability, and performance generally of civil servants. The obvious intent of such a form is that it should be used to rate a civil servant for advancement, and as a guide to place him where his particular skills and abilities can be most useful to the overall operation of Government.

A large part of the report must be shown to the civil servant, to whom it refers, and it is required that his faults, if any, be discussed with him. He is then required to acknowledge by his signature, that he has seen the report, and to indicate whether he agrees with it or not.

In several cases, where I have received complaints that civil servants have been requested to resign, or have been discharged from the Public Service, I have asked to see the Employee Performance Rating Forms. I have been particularly interested in two such forms. These are the last one before the employee's severance from the Public Service, and another one which must be submitted immediately after his severance. He does not see the latter, nor is he required to sign it. Quite frankly, I have found these forms to be misleading at times. Employees have been asked to resign or have been discharged, in some cases abruptly. Frequently there is no reference whatsoever on the Performance Rating Form, that there was anything wrong with the employee's service.

In one instance, in answer to the question "In what parts of the job has the employee been most successful?", the answer included the very feature which had brought about the request for the resignation of that employee. Subsequent to the abrupt resignation of that employee, the final Performance Rating form was submitted. In answer to the same question, it referred the reader back to the previous comments.

In such cases, I usually find that the complaints against the employee have been made separately by letter or memorandum to his superiors by an immediate supervisor. Those remarks, however, are too often not included in the Employee Performance Rating Form.

I am, of course, well aware from my own past experience, why this difficulty arises. It is simply that immediate supervisors are most reluctant to write derogatory reports on an employee, which they must put before him for his agreement or otherwise. The practice too often is to submit an average or better Performance Rating Form, and then endeavour to unload the poor performer by separate correspondence.

Obviously one of two things must follow. Public Service employees are going to be moved into positions for which they are not qualified, or the officers of the Public Service Commission are going to place less and less dependence on the reliability of these reports. I suspect that the latter has already happened.

It is perhaps significant, that on one occasion when I asked a Public Servant in a supervisory capacity, how he explained the disparity between the report and the facts, he finally admitted quite honestly, that he would not have put in such a report had he known there was going to be an Ombudsman.

I have found it necessary to adopt the view that the Employee Performance Rating Form is an official Government form, authorized for use in the Public Service, and when I find that the items reported on such forms are less than accurate, I must bring such discrepancies to the attention of the Departmental head.

General Comments

The Statistics and Case Summaries for 1968 indicate that again this year, I have had to concern myself with the cases of persons detained in Alberta Mental Hospitals.

The Ombudsman's report for 1967 dealt with the case of a Penitentiary prisoner transferred to an Alberta Mental Hospital, who had been unable to enter an appeal against his detention as a mental patient or to obtain a review of his mental health, as provided for in the Alberta Mental Health Act. As a result of my investigation, the complainant was Certified under the provisions of the Alberta Mental Health Act, and advised of his right to a review. The Attorney General's Department instructed that the same procedure should apply in similar cases.

In 1968, the Ombudsman's Office dealt with a number of complaints from persons who were found "Not Guilty" of criminal charges by reason of Insanity, or Unfit to Stand Trial. These persons were subsequently detained in an Alberta Mental Hospital at the pleasure and Order of the Lieutenant-Governor of Alberta. The authority for such detention is found in the Criminal Code of Canada, a Federal Statute, enforced under the direction of the Attorney General of the Province.

Some of these persons had been detained for periods of over twenty years; in one case 27 years.

The complaints received were usually requests to be released from the Mental Hospital. However, investigation revealed that the review provisions of the Alberta Mental Health Act were not applied to such cases. The complainants had never had a review of their mental situation by any independent Committee or Commission established by law. My investigation also revealed that the complainants had almost all been charged with Murder.

My office did considerable research into the law applying to such cases. I found that a considerable number of legal opinions had been expressed, some of them a number of years ago, when concern for the treatment and civil rights of persons, such as these complainants, had not advanced to the more positive views generally recognized today. To illustrate; the former Alberta Mental **Diseases** Act was succeeded by the Alberta Mental **Health** Act on January 1st, 1965.

As a matter of policy, and in the absence of any Statutory requirement, the Department of the Attorney General has called "ad hoc" committees from time to time to make recommendation to the Lieutenant-Governor regarding the further detention or the release of persons in the position of these complainants. These committees usually consist of a Justice of the Supreme Court of Alberta, and two or more Psychiatrists. There is no Statutory requirement for the calling of such committees. It is purely a matter of policy.

It appeared to me that such committees were usually called, only where the release of the detainee was considered probable. None of the complainants who came to the Ombudsman had ever received a review from such a committee.

The person so detained, is detained at the pleasure of the Lieutenant-Governor, upon Ministerial recommendation. In some of the cases with which I have dealt, the Lieutenant-Governor, who issued the Order of detention, is no longer in office, or is deceased. That particular Lieutenant-Governor is therefore in no position to reconsider his original Order. I could find no evidence that the cases of the complainants with whom I dealt, had ever been placed before any

succeeding Lieutenant-Governor by the Department of the Attorney General. So far as I have learned, no succeeding Lieutenant-Governor was ever made aware that the complainants were being detained in a Mental Hospital at his pleasure.

As there is no law requiring that the circumstances of such persons be reviewed, at regular intervals by the Lieutenant-Governor, the initiative for bringing such cases to the attention of His Honour, lies with the Department of the Attorney General. The initiative had not been taken in the cases I refer to.

People who have been found Not Guilty of any crime by Reason of Insanity, or Unfit to Stand Trial, have been detained in Mental Hospitals of this Province for periods of over 25 years.

There are approximately thirty persons of these categories still detained in Mental Hospitals of this Province, who have had no review by an independent tribunal, and whose cases, so far as I am aware, have not been brought again to the attention of the Lieutenant-Governor since their original detention.

This situation should not in any way be inferred as a criticism of the administrative or medical staff of the Hospitals. The advice which the Superintendents of the Mental Hospitals have received from the Attorney General's Department, is that they cannot release persons detained by Order of the Lieutenant-Governor, which advice they must, quite properly follow.

My further research into the laws on indeterminate detention, revealed that persons who have been convicted under the Criminal Code as Habitual Criminals, and who are sentenced, as provided for by law, to an indeterminate sentence, are protected by the Criminal Code. It provides that their detention must be reviewed once a year. No such provision is made for those who have been found Not Guilty by Reason of Insanity, or Unfit to Stand Trial.

I formed the opinion that the existing laws provide for the lawful detention of such persons. They do not provide any obligatory review, or any requirement that such detentions be referred to the Lieutenant-Governor at regular intervals thereafter.

However, in such matters, I must apply myself to the terms of The Ombudsman Act under which I operate. Section 20(1)(d) of that Act states as follows:

> "This Section applies where, after making investigation under this Act, the Ombudsman is of the opinion that the decision, recommendation, act or omission that was the subject matter of the investigation was wrong."

The word "wrong" is not usually used in legal terminology to describe specific offences in various Statutes. They are usually referred to as being "unlawful" or "contrary to law." Indeed the same section which I have quoted, provides additionally for decisions, recommendations, acts or omissions that appear to have been "contrary to law." It would appear to me, therefore, that the words "was wrong" were intended to be viewed in a different context to the words "contrary to law."

I tried to view this whole situation through the eyes of a reasonable man, not necessarily versed in the intricacies of formal law. The Province of Alberta recently retained an authority on Corrections to survey and advise on the treatment of convicted criminals, and their rehabilitation in this Province.

I reflected on the manner in which he emphasized modern Correctional thinking. He placed great weight on rehabilitation, and was critical of the

detention aspects of the system. I thought on the parallel modern approach to the treatment of those detained in Mental Hospitals, where they are now regarded as patients and not prisoners. I had personal knowledge of the constant changes in the laws, legal decisions, and the forward thinking concerned with the civil rights of the individual.

Against these yardsticks, I measured the situation whereby a person convicted of no crime, can be held in detention for periods of over twenty-five years, deprived of any lawful requirement that there ever be a review of the changes, which may have occurred in his mental health, his personality, or other conditions.

Realizing that many of these people are, and may remain psychotic, and may never be released, I faced the question of how can the public be sure that such is the case, in the absence of any independent regular Commission of review.

I must, of course, pay due regard to the law in arriving at an opinion. I am also obligated by the Act under which I work, to give full regard to its provisions, such as the Section I have quoted.

I could come to no other conclusion, but that the situation which I have described, "was wrong."

I have not been able to bring to conclusion as many investigations of complaints against the Workmen's Compensation Board as I would have liked, despite most helpful co-operation from the members of the Board, its officers and staff.

As noted elsewhere in this report, I had no jurisdiction to carry out such investigations, until the amendment to The Ombudsman Act came into force in April, 1968.

It was then necessary to make a thorough study of the whole structure and operations of the Board. These are varied and complex, involving several types of claims and varying procedures for dealing with them. The Chairman and Members of the Board spent some hours in briefing my Solicitor and me, and in answering our numerous questions.

Arrangements were made for Mr. Weir to have frequent meetings with the senior officers of the Board, while I met with the Board itself less frequently. Mr. Weir's project was to make a detailed study of procedures, and the various rights to review and appeal, provided for the workman by Statute, Regulation, or Board policy. I have had further meetings myself with the full Board.

I am satisfied that this period of study and orientation was absolutely essential if I am to know just what measures can be taken to ensure that a complainant receives the benefit of all the medical opinions provided, and other reviews which the law provides.

It is true that the pre-study and research period, has made it necessary to hold in suspension a number of complaints, but any delay will be more than compensated for by the fact that these, and future complainants, will benefit from investigations stemming from knowledge and appreciation, of the Board's functions and responsibilities.

Our work now is increasingly directed to actual case files and this trend will continue.

Another factor has prevented complaints from being concluded. In the majority of the complaints received, enquiry has revealed that there were

additional avenues of appeal available to the complainant, which he had not yet pursued. I had to decline to investigate further until he had done so.*

Most of the complainants were unaware that they had a right to a further review or appeal, and they had not been told by the Board of any further right of appeal.

I have discussed with the Board the desirability of informing an applicant, when he has been rejected, of his right of further appeal, if it exists. On occasion he was advised, but it was not mandatory to do so, and I believe that in the majority of cases, it was not done at all.

From our discussions, I have every reason to believe that such notification will be given in future, and that a policy instruction to this effect is being issued.

A right is provided for medical cases where the applicant may ask for a further examination under the Act.** However, the results of such an examination may not only increase the compensation paid to the applicant, but it may also leave the compensation unchanged, reduce it, or eliminate it entirely.

It has not been the practice of the Board to inform an applicant seeking such an examination, that he may lose, as well as gain, financially.

When my investigations require me to tell the complainant of his right to ask for a further investigation under the Act, I have adopted a policy of reminding him of all the consequences, and suggesting that he consult his Physician, and possibly a Solicitor, before making his decision.

Obviously, it would be most improper for me to advise him what to do in such cases. I can only tell him of the rights available to him, and decline further investigation until he has exhausted the further appeal procedure. The Ombudsman Act requires me to do this.***

I have discussed with the Board, my views that all applicants should be advised of the varying decisions which can be made as a result of such an examination, under the Section referred to.

The Board had not made a practice of so advising the applicant. The Board felt that such a letter from the Board, could be interpreted as an attempt to discourage the applicant. The matter is being reconsidered by the Board.

The question of the commutation of very small monthly payments into a lump sum payment, when requested, has arisen, due to one or two complaints received. However, the Legislative Committee will be reviewing the Workmen's Compensation Act very shortly, and the question has been held over until that review is completed.

This year I carried out my first investigation "of my own motion" as provided for in the Act.**** The Ombudsman initiates an investigation himself infrequently; but it is done where warranted, usually in a matter of some public concern.

This one resulted from an article carried in a weekend supplement magazine, "The Canadian." The article was very critical of detentions at the Alberta Mental Hospital at Oliver. It contained two particularly serious items alleging mistreatment of patients by the staff.

The Minister of Health denied the story to the Press.

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* Section 12(1)(a)
** Workmen's Compensation Act. Sec. 27.
*** Section 12(1)(a)
****Section 11(2)

The writer of the article, a woman, who had obtained admission to the Hospital as a voluntary patient under an assumed name, replied, according to the Press, that statements and names of her sources of information could be made available to a "responsible official."

Due to public concern, I announced that insofar as the allegations of inhumane treatment alone, were concerned, I proposed to commence an investigation. I did so, as summarized elsewhere in this report.

When my investigation concluded, the Legislature was not sitting. I forwarded my report to the Deputy Minister of Health for the information of the Minister.

I had received a number of calls from relatives of patients in the particular hospital, and other similar hospitals in Alberta, who were concerned for the welfare of their relatives. Therefore, in order to allay public concern, I exercised the authority given to me by The Ombudsman Act.* I forwarded copies of my report to the news media for publication and transmission.

I have had to deal this year, with one case in which the complainant was emotionally disturbed, to a point where I felt, that if my findings were not entirely in his favour, he might take some strong measures against those he blamed for his problem.

I endeavoured to dissuade him from carrying out the threats he was making. These were plain to me, but obscure enough that I could take no action, except to persuade him.

My investigation did not support his complaint. However, I did not advise him at once for the reasons I have mentioned, and I kept in touch with him. I finally received from him, a very definite threat of a serious nature, against the persons and property of an elected representative and a senior public servant. I took discreet steps to arrange for him to be placed under medical advice. He was Certified and admitted to a mental hospital. I am advised that he has benefited greatly from the medical treatment received.

This has been a full year of experiment and development of the Ombudsman's Office. I have learned much, and have confirmed my consciousness of having much to learn. I have received very good co-operation from senior and subordinate Public Servants, representing many Departments and Agencies of the Government of this Province.

I have not had to exercise any of the enforcement powers provided by the Act to obtain any information or interviews I have required. There have been no cases yet which have necessitated a special report under Section 20, Subsections (4) and (5).

I have been fortunate in the efficiency and enthusiasm of my staff; the Solicitor, Mr. Alex B. Weir; the two Investigators, Mr. Ted N. Groenland and Mr. Thomas Janakas; my invaluable Secretary, Mrs. Lois Holland; and the two Stenographers, Miss Diana Gizowski and Miss Carinne Manns. Much has been required of them and they have responded cheerfully and well.

I shall be pleased to provide further information about any aspects of my work, as may be desired by the Legislature.

GEO. B. McCLELLAN,
Ombudsman.

February 1, 1969.

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* Section 26(2)(b)

Appendix I

GOVERNMENT DEPARTMENTS OR AGENCIES

1967

Dept. of Agriculture			
	67-100-1	Improper fencing of right of way	Not Justified
*	100-3	License to sell livestock medicine	Rectified
	100-4	Financial Assistance through A.R.D.A.	No Jurisdiction 12(1)(a)
*	100-6	Non-payment of bonus for purchase of registered bull	Rectified
Alberta Government Telephones			
	67-260-3	Telephone facilities on private property	Abandoned
Alberta Securities Commission			
	67-290-1	Undue interference by Securities Commission	Not Justified
Dept. of the Attorney General			
	67-110-2	Legal fees and perjury	No Jurisdiction 11(1)
	110-8	Failure to prosecute	No Jurisdiction 12(1)(b)
	110-13	Mistreatment by Goal authorities	Abandoned
*	110-14	Expenses attending Commission	Rectified
	110-15	Failure to take action	No Jurisdiction 12(1)(a)
*	110-19	Dismissal as prison guard	Rectified
*	110-4	Committal of husband to mental hospital	Rectified
Dept. of Education			
	67-120-1	Extension of teaching certificate	Not Justified
	120-2	School bus service	No Jurisdiction 11(1)
	120-3	Civil case against school board	Declined 12(1)(a)
	120-4	Operation of school bus	No Jurisdiction 11(1)
Dept. of Public Health			
*	67-130-5	Dismissal from employment	Rectified
	130-7	Detention of parent in Mental Hospital	Not Justified
	130-8	Recovery of Dental Hygiene Bursary	Rectified
	130-11	Detention in Mental Hospital	Not Justified
	130-12	Detention in Mental Hospital	Not Justified

Dept. of Public Health (Continued)

	130-13	Detention in Mental Hospital	Not Justified
	130-14	Loss of position	Not Justified
	130-15	Right to practise medicine	No Jurisdiction 11(1)

Dept. of Highways

*	67-140-8	Unsatisfied claim against Motor Vehicle Accident Claims Fund	Rectified

Dept. of Industry & Development

	67-150-1	License to sell magazines	Rectified

Dept. of Labour

	67-160-2	Appeal against Union certification	Withdrawn
*	160-3	Prosecution by Board of Industrial Relations	Rectified

Dept. of Lands & Forests

	67-170-1	Objects to terms of homestead sale	Withdrawn
*	170-5	Compensation for improvements on Crown land	Rectified
*	170-6	Lease of Crown land	Not Justified
	170-7	Objection to Big Game License Regulations	Abandoned
	170-8	Dangerous hunting	Rectified
*	170-10	Settlement of bridge building contract	Rectified
	170-11	Failure to obtain cultivation lease	Not Justified
	170-13	Objection to terms of homestead sale	Not Justified
	170-14	Location of Provincial park	Not Justified

Dept. of Mines & Minerals

	67-180-1	Mineral surface rights	Not Justified

Dept. of Municipal Affairs

	67-190-1	Assessment appeal	Not Justified
	190-2	Complaint against decision of Assessment Appeal Board	Not Justified

Provincial Planning Board

	67-340-4	Appeal decision authorizing commercial establishment in City development area	Rectified

Public Service Commissioner

67-280-2	Failure to obtain Government employment	Not Justified

Public Service Pension Board

67-350-1	Objects to computation of Provincial Public Service Pension	Not Justified

Public Trustee

67-330-1	Administration of estate	Not Justified
330-4	Disposition of funds	Not Justified
330-5	Administration of estate	Rectified
* 330-6	Fees for administration of estate	Withdrawn

Public Utilities Board

67-270-1	Mineral surface rights	Transferred. See: 67-180-1

Dept. of Public Welfare

67-210-1	Protests deduction of over-payment for Welfare Assistance	Rectified
210-6	Amount of Welfare Assistance	Abandoned
210-8	Old Age Assistance payments	Not Justified
210-9	Caveat on home	Not Justified
210-10	Children's home conditions	Rectified

Workmen's Compensation Board

67-300-5	Workmen's Compensation claim	Abandoned
300-8	Workmen's Compensation claim	Abandoned
300-19	Workmen's Compensation claim	Abandoned
300-21	Workmen's Compensation claim	Declined

MISCELLANEOUS

Complaints Against Cities, Municipalities, Towns, Etc.

67-400-1	Refund of municipal taxes	No Jurisdiction 12(1)(a)
400-9	Damage to house from blasting	No Jurisdiction 11(1)
400-12	Crop damage from spraying road allowance	No Jurisdiction 11(1)

Complaints Against Private Business (Assistance and Referral)

67-420-4	Overpayment of taxes by mortgagee	No Jurisdiction 11(1)
420-9	Unable to obtain car insurance	No Jurisdiction 11(1)
* 420-10	Objection to bank seizure under Farm Improvement Loan Act	Withdrawn

Complaints Regarding Private Disputes

67-440-22	Disposition of Estate	No Jurisdiction 11(1)
440-24	Complaint against Solicitor	No Jurisdiction 14(1)(a)

No Specific Complaint Made

* 67-450-18	Information on assistance for partially blind	Not Justified

Request for Assistance — No complaint involved

67-470-7	Information on assistance for partially blind	Transferred. See: 67-450-18

Appendix II

GOVERNMENT DEPARTMENTS OR AGENCIES

1968

Dept. of Agriculture		(8)	
68-100-1	Failure to pay for emergency livestock feed		Investigation
100-2	Desire to establish a drainage district		Investigation
100-3	Irrigation Council approving Grazing Lease cancellation		Investigation
100-4	Illegal weir across river		Investigation
100-5	A.R.D.A. project		Not Justified
100-6	Water drainage difficulties		Investigation
100-7	Purchase of land by colonization		Investigation
100-8	License to divert water		Investigation
Alberta Government Telephones		(8)	
* 68-260-1	Discontinued telephone service		Rectified
260-2	Responsibility for certain calls		Not Justified
260-3	Collection procedure		Rectified
* 260-4	Deposit for telephone use		Rectified
260-5	A.G.T. giving exclusive telephone rights in parts of Alberta to B.C. Telephones		Discontinued
260-6	Proposed telephone exchange		Investigation
260-7	Increased rates		Declined 14(1)(a)
260-8	Telephone discontinued		Investigation
Alberta Liquor Control Board		(1)	
68-320-1	Issuance of a tavern license		Investigation
Alberta Securities Commission		(2)	
68-290-1	Application for security license rejected		Declined 14(1)(a)
290-2	Failure to investigate brokerage firm		Declined 14(1)(a)
Dept. of the Attorney General		(52)	
68-110-1	Fine and gaol term imposed		No Jurisdiction 11(1)
110-2	Court reporting system		Investigation

Dept. of the Attorney General (Continued)

	68-110-3	Alleged forgery	Not Justified
	110-4	Decision relating to criminal prosecution	No Jurisdiction 12(1)(b)
	110-5	Disposition of seized equipment	No Jurisdiction 12(1)(a)
	110-8	Failure to answer correspondence	Abandoned
	110-9	Investigation by Police	Declined 14(1)(a)
	110-10	Unfair treatment by supervisor over employee	Declined 14(2)(b)(i)
	110-11	Abduction of child by father	Withdrawn
	110-12	Investigation by Police	Declined 14(1)(a)
	110-13	Dismissal from Civil Service	Not Justified
	110-14	Prisoner claims unfair treatment by Police	Discontinued
	110-15	Seizure of equipment	No Jurisdiction 11(1)
	110-16	Civil suit	No Jurisdiction 11(1)
	110-18	Crown's refusal to prosecute	No Jurisdiction 12(1)(b)
	110-19	Legal Aid refused	Not Justified
	110-20	Public statement by prison official	Not Justified
	110-21	Censorship of mail by prison authorities	Not Justified
	110-22	Compensation to victim of crime	No Jurisdiction 11(1)
	110-23	Prisoner requests trial exhibits returned before appeal	Not Justified
	110-24	Release of seized goods	No Jurisdiction 11(1)
	110-25	Procedure adopted in investigation connected with prosecution	Not Justified
	110-26	Outstanding warrant	Investigation
	110-27	Police harassment	Investigation
	110-28	Anonymous complaint against Police	Declined 12(1)(a)
	110-29	Failure to prosecute	No Jurisdiction 12(1)(b)
	110-30	Request for transfer to another gaol	Not Justified
*	110-31	Loss of money when in custody	Rectified
	110-32	Prisoner requests transfer	Rectified
	110-33	Request for bail from prison	No Jurisdiction 11(1)
	110-34	Failure to prosecute	No Jurisdiction 11(1)
	110-35	Enforcement Highway Traffic Act regulations within Municipality	Investigation
*	110-36	Detention in a Mental Institution	Rectified
	110-37	Legal fees through Legal Aid	Investigation
	110-39	Inadequate medical attention at gaol	Not Justified
	110-40	Conduct of Government Ward	Investigation

Dept. of the Attorney General (Continued)			
	110-42	Mistreatment while in custody	Declined 14(2)(a)
	110-43	Forfeiture of bail moneys	Investigation
	110-44	Injured while in custody in gaol	Rectified
	68-110-45	Inmates in custody disciplined	Not Justified
	110-46	Prosecuted without justification	Declined 12(1)(a)
	110-47	Failure to hold a public hearing	No Jurisdiction 11(1)
	110-49	Preventing vandalism	Declined 14(1)(a)
*	110-50	Refusal to pay travel expenses from gaol to home upon release	Rectified
	110-51	Police brutality	Declined 12(1)(a)
	110-52	Court action by Government	No Jurisdiction 12(1)
	110-53	Proceedings following incarceration	Declined 14(1)(a)
	110-54	Ownership of minerals	Investigation
*	110-55	Detention in Mental Hospital	Rectified
	110-56	Prisoner requests oral surgery and dentures	Investigation
	110-57	Insufficient investigation by police authorities	Declined 12(1)(a)
	110-58	Retention of money submitted to Government in error	Investigation
Dept. of Education		(13)	
	68-120-1	Qualifications of school committee member	Referred to dept. concerned
	120-2	Current school book criticized	No Jurisdiction 11(1)
	120-3	Refused credits for language instructor	Withdrawn
	120-4	Refused vocational training	Withdrawn
	120-5	Failure to approve educational credentials	Not Justified
*	120-6	Registering difficulty at N.A.I.T.	Rectified
*	120-7	Non-certification of teacher	Declined 14(1)(a)
	120-8	Application for public and private school	Declined 14(2)(b)(iii)
	120-9	Refusal of school assistance grant	Investigation
	120-10	Failure to convene a hearing	Declined 14(1)(a)
	120-11	School district boundaries	Declined 14(1)(a)
	120-12	Educational opportunity	Investigation
	120-13	Financial grant refused to University student	Investigation
Dept. of Public Health		(39)	
	68-130-1	Alberta Health Plan	Investigation
	130-2	Former patient at Ponoka	Not Justified

Dept. of Public Health (Continued)

	130-3	Discrimination against dental mechanics	Abandoned
*	130-4	Injury claim while a patient in Mental Hospital	Rectified
*	130-5	Confinement in Mental Hospital	Declined 14(1)(b)
	68-130-7	Delay of payment under Alberta Health Plan	Investigation
*	130-8	Alleged mistreatment of patients at Alberta Hospital	Not Justified
	130-9	Coverage under Alberta Blue Cross Plan	Investigation
	130-10	Committal to mental hospital	Withdrawn
	130-11	Transfer of patient at mental institution	Declined 14(1)(a)
	130-12	Treatment at mental institution	Not Justified
	130-13	Detention at mental institution	Not Justified
	130-14	Employment dismissal	Investigation
	130-15	Dismissal from public service	Investigation
	130-16	Unrectified pension claim	Withdrawn
	130-17	Responsibility for moving expenses	Investigation
	130-18	Detention in mental institution	Discontinued
	130-19	Treatment at mental institution	Declined 14(1)(a)
	130-20	Improper detention	Not Justified
	130-21	Treatment of patient in provincial institution	Declined 14(2)(b)(iii)
	130-22	Responsibility for medical services supplied	Investigation
	130-23	Restaurant closed by Department	Declined 14(1)(b)
	130-24	Confinement of relative in mental hospital	Investigation
	130-25	Resignation from employment	Declined 14(1)(a)
	130-27	Alberta Health Plan	Not Justified
	130-28	Non-acceptance of professional qualifications	Not Justified
	130-29	Delay in payment of bills by Alberta Health Plan	Rectified
	130-30	Professional remuneration	Investigation
	130-31	Detained patient at mental hospital	Not Justified
	130-32	Error in Blue Cross deductions	Rectified
	130-33	Employment dismissal	Investigation
	130-34	Termination of employment	Investigation
	130-35	Alberta Health Plan fail to answer correspondence	Rectified
	130-36	Detention in mental institution	Investigation
	130-37	Supervision over mental defectives	Declined 14(1)(a)
	130-38	Wrongfully admitted and detained in mental institution	Investigation
	130-39	Dismissal from public service	Investigation

Dept. of Public Health (Continued)		
130-40	Detention in mental institution	Not Justified
130-41	Employment opportunity	Discontinued
Dept. of Highways	(28)	
* 68-140-1	Proposed suspension of trucking license	Rectified
140-2	Highway construction agreement	Not Justified
140-3	Purchase of Indian lands	Declined 12(1)(a)
140-4	Dissatisfied with contract with Department	Abandoned
140-5	Dismissal from Civil Service	Not Justified
140-6	Remuneration under highway contract	Rectified
140-7	Property development refusal	Investigation
140-8	Restricted business development on property adjacent to highway	Investigation
140-9	Highway by-pass	Not Justified
140-11	Dispute with highway contractor	No Jurisdiction 11(1)
140-12	Expropriation agreement	Not Justified
140-13	Suspension of license	Declined 14(1)(b)
140-14	Disputes Department's request for financial responsibility	Referred to dept. concerned
140-15	Extent of recovery in a motor vehicle action	Investigation
140-17	Collection from Motor Vehicles Claims Fund	Declined 14(1)(a)
140-18	Erosion caused by highway construction	Investigation
140-19	Electrical power cut off	Investigation
140-20	Government gravel stockpile on private property	Discontinued
140-21	Cancellation instructor's license	Not Justified
140-22	Proposed suspension of relative's operator's license	Declined 14(2)(b)(iii)
140-23	Refusal to reinstate operator's license	Investigation
140-24	Non-transfer of motor vehicle plates	Declined 12(1)(a)
140-25	Condition of highway	Investigation
140-26	Refused reinstatement of driver's license	Investigation
140-27	Inconsistencies in the Motor Vehicle Safety Inspection Program	Investigation
140-28	Underpayment for highway fill	Investigation
140-29	Weed control program	Investigation
140-30	Claim denied by Motor Vehicles Accident Claims Fund	Investigation
Dept. of Industry & Tourism	(2)	
68-150-1	Cancellation of building funds by Order-in-Council	Investigation
150-2	Supplemental by-laws of a co-op	Investigation

Dept. of Labour		(3)	
68-160-1	Inquiry by Board of Industrial Relations		Investigation
* 160-2	Minimum wages		Rectified
160-3	Necessity of writing promotional exams		Declined 14(1)(a)
Dept. of Lands and Forests		(13)	
68-170-2	Infraction under The Forests Act—1961		Investigation
170-3	Costs for transferring ownership of land		Not Justified
170-4	Beach facilities		Withdrawn
170-5	Fees on homestead lease		Investigation
170-6	Cancellation of grazing association		Investigation
170-7	Application for Commercial Game Fish Farm license		Not Justified
170-8	Rental deductions from salary		Declined 14(1)(a)
170-9	Salary dispute with temporary emergency helper		Investigation
170-10	Restricted use of campsite during winter		Investigation
170-11	Terms of homestead sale		Investigation
170-12	Dispute over land purchase		Investigation
170-13	Homestead agreement dispute		Not Justified
170-14	Cancellation of Government grazing lease		Investigation
Dept. of Mines & Minerals		(5)	
68-180-1	Decision of Board of Arbitration		Abandoned
180-3	Surface Reclamation Council		Investigation
180-4	Failure to provide hearing after objection to expropriation filed		Investigation
180-5	Improper approval of mineral rights		Investigation
180-6	Reclamation program		Investigation
Dept. of Municipal Affairs		(9)	
68-190-1	Decision of Assessment Appeal Board		Not Justified
190-2	Cancellation of land sale		Declined 12(1)(a)
190-3	Land consolidation contract		Not Justified
190-4	Cabinet Minister's failure to answer correspondence		No Jurisdiction 11(1)
190-5	Property tax assessment		No Jurisdiction 12(1)(a)
190-6	Payment for road work in Irrigation District		Not Justified
190-7	Taxation assessment dispute		Investigation
190-8	Decision of Assessment Appeal Board		Not Justified
190-9	Sale of tax recovered land		Investigation

Provincial Planning Board		(3)	
68-340-1	Zoning for apartments		Investigation
340-2	Zoning appeal rejected		Investigation
340-3	Refusal to adjudicate		Not Justified
Provincial Secretary		(2)	
68-200-1	Cancellation of license		Not Justified
200-2	Audit for Real Estate agents		Declined 14(1)(a)
Provincial Treasurer		(4)	
68-250-1	Dispute with Treasury Branch		Withdrawn
250-2	Gasoline tax		No Jurisdiction 11(1)
250-3	Irregularities — Treasury Branch		No Jurisdiction 12(1)(a)
250-4	Delay of salary cheque to new public servant		Declined 14(2)(b)(i)
Public Service Commission		(4)	
68-280-1	Employment refusal		Withdrawn
280-2	Pay on resignation		Abandoned
280-3	Salary dispute		Abandoned
280-4	Delay in reclassification		Declined 14(1)(a)
Public Service Pension Board		(1)	
68-350-1	Pension refusal		Investigation
Public Trustee		(11)	
68-330-1	Administration of estate		Not Justified
330-2	Settlement of estate		Abandoned
330-3	Distribution of estate		Rectified
330-4	Administration of mental incompetent's estate		Investigation
330-6	Mismanagement of mental patient's affairs		Not Justified
330-7	Expenses and delays in estate administration		Not Justified
330-8	Mishandled estate		Investigation
330-9	Settlement of an estate		Investigation
330-10	Landlord tenancy dispute		Investigation
* 330-11	Public Trustee handling affairs after patient certified healthy		Rectified
330-12	Administration of mental patient's estate		Investigation

Public Utilities Board		(5)	
68-270-1	Enforcement of milk regulations		Abandoned
270-2	Reliability of evidence presented		Investigation
270-3	Decision to resolve an expropriation		Investigation
270-5	Extent of compensation awarded		Investigation
270-6	Insufficient compensation for flooded land		Investigation
Dept. of Public Welfare		(25)	
* 68-210-1	Further assistance requested		Rectified
210-2	Child custody		Declined 12(1)(a)
210-3	Insufficient Social Allowance		Not Justified
210-4	Welfare assistance		Declined 14(1)(a)
210-5	Numerous trivial issues		Investigation
210-6	Possible apprenhension of children		Declined 14(1)(a)
210-7	Wrongful dismissal		Abandoned
210-8	Child made ward of province		Declined 14(1)(a)
210-9	Allowance discontinued		Not Justified
210-10	Non-payment of welfare		Abandoned
210-11	Reduction in welfare assistance		Discontinued
210-12	Extent of welfare assistance		Abandoned
210-13	Misdirection of gifts to ward of Child Welfare Department		Abandoned
* 210-14	Child custody		Rectified
210-15	Damage to rented quarters by Welfare occupants		Declined 12(1)(a)
210-16	Refund of welfare overpayment		Not Justified
210-17	Welfare assistance for parents		Rectified
210-18	Medical bills and old age security		Investigation
210-19	Non-payment hospital costs		Investigation
210-20	Domestic problems and false evidence		Not Justified
210-21	Insufficient financial assistance		Investigation
210-22	Denial of oral agreement		Investigation
210-23	Financial Assistance denied		Investigation
210-24	Reduction of social allowances		Investigation
210-25	Landlord tenancy dispute		Investigation
Dept. of Public Works		(6)	
68-220-1	Dismissal from Government service		Not Justified
220-2	Air pollution from Government property		Declined 14(1)(a)

Dept. of Public Works (Continued)			
*	68-220-3	Payment of contractor's debt	Rectified
	220-4	Employment dismissal	Not Justified
	220-5	Accident with Government vehicle	Investigation
	220-6	Sewage disposal problem	Investigation
Dept. of Youth		(2)	
	68-230-1	Discharge from temporary Government employment	Abandoned
	230-2	Employment refused	Not Justified
Workmen's Compensation Board		(76)	
	68-300-1	Pension inadequate for injury	Abandoned
	300-2	Medical treatment insufficient	Abandoned
	300-3	Pension insufficient due to increased cost of living	Investigation
	300-4	Compensation stopped prematurely	Investigation
	300-5	Compensation stopped prematurely	Abandoned
	300-6	Subrogation rights	Investigation
	300-7	Claim for compensation rejected	Withdrawn
	300-8	Pension inadequate for injury	Investigation
	300-9	Compensation stopped prematurely	Declined 12(1)(a)
	300-10	Compensation stopped prematurely	Not Justified
	300-11	Compensation stopped prematurely	Declined 12(1)(a)
	300-12	Termination of employment	Withdrawn
	300-13	Pension inadequate for injury	Declined 12(1)(a)
	300-14	Pension inadequate for injury	Investigation
*	300-15	Inadequate pension for dependent widow	Not Justified
*	300-16	Claim for compensation rejected	Not Justified
	300-17	Pension inadequate for injury	Declined 12(1)(a)
	300-18	Delay of pension payment	Investigation
	300-19	Pension inadequate for injury	Declined 12(1)(a)
	300-20	Compensation stopped prematurely	Investigation
*	300-21	Claim for compensation rejected	Investigation
*	300-22	Pension insufficient due to increased cost of living	Investigation
	300-23	Pension inadequate for injury	Declined 12(1)(a)
	300-24	Pension inadequate for injury	Declined 12(1)(a)
	300-25	Pension inadequate for injury	Declined 12(1)(a)

Workmen's Compensation Board (Continued)

	300-26	Claim for compensation rejected	Declined 12(1)(a)
	300-27	Claim for compensation rejected	Investigation
*	300-28	Claim for compensation rejected	Rectified
	300-29	Pension inadequate for injury	Declined 12(1)(a)
	300-30	Claim for compensation rejected	Investigation
	300-31	Pension insufficient due to increased cost of living	Investigation
	300-32	Claim for compensation rejected	Declined 12(1)(a)
*	68-300-33	Compensation stopped prematurely	Rectified
	300-34	Compensation refused	Declined 12(1)(a)
	300-35	No Compensation	Not Justified
	300-36	Claim for compensation rejected	Investigation
*	300-37	Commutation of monthly pension	Rectified
	300-38	Pension insufficient as no adjustment to relate disability with present qualifications	Investigation
	300-39	Claim for compensation rejected	Investigation
	300-40	Inadequate compensation	Discontinued 12(1)(a)
	300-41	Assessment of permanent pension	Declined 12(1)(a)
	300-42	Inadequate pension	Declined 12(1)(a)
	300-43	Claims to be employee and not employer	Declined 12(1)(a)
	300-44	Dissatisfaction with review procedures	Investigation
	300-45	Compensation stopped prematurely	Declined 12(1)(a)
	300-46	Compensation stopped prematurely	Declined 12(1)(a)
	300-47	Commutation of monthly pension	Investigation
	300-48	Pension inadequate for injury	Declined 12(1)(a)
	300-49	Pension inadequate for injury	Declined 12(1)(a)
	300-50	Pension inadequate for injury	Declined 12(1)(a)
	300-51	Pension inadequate for injury	Declined 12(1)(a)
	300-52	Compensation stopped prematurely	Declined 12(1)(a)
	300-53	Pension inadequate for injury	Declined 12(1)(a)
*	300-54	Safety features at construction site	Declined 12(1)(a)
	300-55	Pension inadequate for injury	Declined 12(1)(a)
	300-56	No decision on acceptability of claim	Investigation
	300-57	Compensation stopped prematurely	Investigation
	300-58	Not specific	Abandoned
	300-59	Compensation stopped prematurely	Declined 12(1)(a)

Workmen's Compensation Board (Continued)

300-60	Compensation stopped prematurely	Declined 12(1)(a)
300-61	Medical treatment insufficient	Investigation
300-62	Compensation stopped prematurely	Declined 12(1)(a)
300-63	Compensation stopped prematurely	Investigation
300-64	Compensation inadequate for injury	Investigation
68-300-65	Compensation stopped prematurely	Investigation
300-67	Compensation stopped prematurely	Declined 12(1)(a)
300-68	Pension insufficient due to increased cost of living	Investigation
300-69	Pension inadequate for injury	Declined 12(1)(a)
* 300-70	Compensation stopped prematurely	Declined 12(1)(a)
300-71	Pension inadequate for injury	Investigation
300-72	Claim for compensation rejected	Investigation
300-73	Compensation stopped prematurely	Investigation
300-74	Not specific	Investigation
300-75	Pension inadequate for injury	Investigation
300-76	Collection procedure after overpayment of pension	Investigation
300-77	Compensation stopped prematurely	Investigation

MISCELLANEOUS

Complaints Against Cities, Municipalities, Towns, Etc.	(30)	
68-400-1	Road access	No Jurisdiction 11(1)
400-2	Property tax assessment	No Jurisdiction 11(1)
400-3	Payment refused after services rendered	Investigation
400-4	Expropriation of property	No Jurisdiction 11(1)
400-5	Costs for extinguishing a fire	No Jurisdiction 11(1)
400-6	School bus contract	No Jurisdiction 11(1)
400-7	Property tax assessment	No Jurisdiction 11(1)
400-8	Urban renewal proposal by city	No Jurisdiction 11(1)
400-9	Broken water line	No Jurisdiction 12(1)(b)
400-10	Responsibility for injury at school	No Jurisdiction 11(1)
400-11	Employment contract dispute	No Jurisdiction 11(1)
400-12	Civil suit	No Jurisdiction 11(1)
400-13	School bus service	No Jurisdiction 11(1)
400-14	Discrimination of Municipal Counsellor	No Jurisdiction 11(1)
400-15	Rural line fence	No Jurisdiction 11(1)
400-16	Property tax assessment	No Jurisdiction 11(1)
400-17	Acquisition of property for draining ditch	No Jurisdiction 11(1)
400-18	City official refused assistance	No Jurisdiction 11(1)
400-19	Land tax assessment	Declined 14(1)(a)
400-20	Battery and cruelty at local Health Clinic	No Jurisdiction 11(1)
400-21	Municipal election plebiscite	No Jurisdiction 11(1)
400-22	Decision of local Hospital Board	No Jurisdiction 11(1)

Complaints Against Cities, Municipalities, Towns, Etc. (Continued)		
68-400-23	Requests investigation into financial statements of county	Investigation
400-24	Refusal of building permit	No Jurisdiction 11(1)
400-25	Business tax (city)	No Jurisdiction 11(1)
400-26	Expropriation proceeding by a town	Investigation
400-27	Validity of a Municipal by-law	No Jurisdiction 11(1)
400-28	Financial support of Junior College	No Jurisdiction 12(1)
400-29	Access road requested	No Jurisdiction 11(1)
400-30	Property tax assessment	No Jurisdiction 12(1)(a)
Complaints Against Federal Departments or Agencies (22)		
68-410-1	Decision of Department of Transport	No Jurisdiction 11(1)
410-2	Parole refusal	No Jurisdiction 11(1)
410-4	Post Office procedure	No Jurisdiction 11(1)
410-5	Pension for civil servant	No Jurisdiction 11(1)
410-6	Dispute with C.M.H.C.	No Jurisdiction 11(1)
410-7	Advertising material through postal system	No Jurisdiction 11(1)
410-8	Business dispute with Federal Government Department	No Jurisdiction 11(1)
410-9	Employment refused	No Jurisdiction 11(1)
410-10	Dismissal from Federal Civil Service	No Jurisdiction 11(1)
410-11	Veteran's pension	Referred to Department of Veterans Affairs
410-12	Parole discontinued	No Jurisdiction 11(1)
410-13	Cancellation of parole	Abandoned
410-14	Responsibility for hospitalization of Veteran	No Jurisdiction 11(1)
410-15	War pension	No Jurisdiction 11(1)
410-16	Rejection of job application	No Jurisdiction 11(1)
410-17	Department of National Revenue demand	No Jurisdiction 11(1)
410-18	Federal Customs policy	No Jurisdiction 11(1)
* 410-19	Constitutional status of Federal Health Legislation	No Jurisdiction 11(1)
410-20	Deportation proceedings	No Jurisdiction 11(1)
410-21	Accident with Federal Government motor vehicle	No Jurisdiction 11(1)
410-22	Amendment to Criminal Code of Canada	No Jurisdiction 11(1)
410-23	Canada Pension benefits	No Jurisdiction 11(1)
Complaints Against Private Business (Assistance and Referral) (30)		
68-420-1	Conduct of Chartered Bank Manager	No Jurisdiction 11(1)

Complaints Against Private Business (Assistance and Referral) (Continued)

68-420-2	Bond cancelled by bonding company	Abandoned
420-3	Bank charges	No Jurisdiction 11(1)
420-4	Activities of private business organization	No Jurisdiction 11(1)
420-5	Service maintenance delays by trailer company	No Jurisdiction 11(1)
420-7	Dispute with a Mortgage company	No Jurisdiction 11(1)
420-8	Dispute with employer	No Jurisdiction 11(1)
420-9	Employment dispute	No Jurisdiction 14(1)(a)
420-10	Faulty furniture upholstering	No Jurisdiction 11(1)
420-11	Real estate dispute	No Jurisdiction 11(1)
420-12	Dispute over terms in sale of livestock	No Jurisdiction 11(1)
420-13	Misunderstanding about investment	No Jurisdiction 11(1)
420-14	Disposition of family estate	No Jurisdiction 11(1)
420-15	Disappearance of loaned motor vehicle	No Jurisdiction 11(1)
420-16	Ill-fitting hearing aid	Rectified
420-17	Mink rancher claims losses against Oil Company	No Jurisdiction 11(1)
420-18	Cancellation of a bond	No Jurisdiction 11(1)
420-19	Refusal by lawyer to accept case	No Jurisdiction 11(1)
420-20	Bail dispute	No Jurisdiction 11(1)
420-21	Conduct of a lawyer in private practice	No Jurisdiction 11(1)
420-22	Refund on unsatisfactory hearing aid	No Jurisdiction 11(1)
* 420-23	High pressure salesman	Rectified
420-24	Dissatisfaction with lawyer	No Jurisdiction 11(1)
420-25	Private business deal	No Jurisdiction 11(1)
420-26	Civil action re accident	No Jurisdiction 11(1)
420-27	Ownership of grain	No Jurisdiction 11(1)
420-28	Purchaser objects to treatment by car dealership	No Jurisdiction 11(1)
420-29	Timber lease violations	No Jurisdiction 11(1)
420-30	Poor administration by non-profit health organization	No Jurisdiction 11(1)
420-31	Purchase of radio	No Jurisdiction 11(1)

Complaints Regarding Matters Outside Province of Alberta (6)

68-430-1	Loss of employment	Not Justified
430-2	Employment dispute with non-resident employer	No Jurisdiction 11(1)
430-3	Employment dispute	No Jurisdiction 11(1)
430-4	B.C. Workmen's Compensation Board decision	No Jurisdiction 11(1)

Complaints Regarding Matters Outside Province of Alberta (Continued)

68-430-5	Failure to prosecute outstanding charge by another province	No Jurisdiction 11(1)
430-6	Expropriation by Government Department	No Jurisdiction 11(1)

Complaints Regarding Private Disputes (51)

68-440-1	Conditions of land sale	No Jurisdiction 11(1)
440-2	Dispute with neighbor	Declined 12(1)(a)
440-3	Dissatisfaction with lawyer	No Jurisdiction 11(1)
440-4	Disposition of estate	No Jurisdiction 11(1)
440-5	Eligibility for pension — private company	Rectified
440-6	Motor vehicle purchase	No Jurisdiction 11(1)
440-7	Financial dispute	No Jurisdiction 11(1)
440-8	Remuneration from investment	No Jurisdiction 11(1)
440-9	Sale of property	No Jurisdiction 11(1)
440-10	Collection difficulties under agreement	No Jurisdiction 11(1)
440-11	Private contractual dispute	No Jurisdiction 11(1)
440-12	Private business dispute	No Jurisdiction 11(1)
440-13	Numerous private issues	Declined 14(1)(a)(b)
440-14	Dissatisfaction with lawyer's advice	No Jurisdiction 11(1)
440-15	Private civil suit	Not Justified
440-16	Private real estate dispute	No Jurisdiction 11(1)
440-17	Loss of position	No Jurisdiction 11(1)
440-18	Private debt	No Jurisdiction 11(1)
440-19	Interest paid by Trust Company	No Jurisdiction 11(1)
440-20	Marital discord	No Jurisdiction 11(1)
440-21	Bankruptcy settlement	No Jurisdiction 11(1)
440-22	Property title dispute	No Jurisdiction 11(1)
440-23	Complaint against solicitor	No Jurisdiction 11(1)
440-24	Domestic dispute	No Jurisdiction 11(1)
440-25	Obtaining land title	No Jurisdiction 11(1)
440-26	Private debt	No Jurisdiction 11(1)
440-27	Seizure of machinery	No Jurisdiction 11(1)
440-28	Effect of seismograph testing	No Jurisdiction 11(1)
440-29	Collection after Judgment	No Jurisdiction 11(1)
440-30	Private contractual dispute	No Jurisdiction 11(1)
440-31	Domestic difficulties	No Jurisdiction 11(1)

Complaints Regarding Private Disputes (Continued)

440-32	Unfair employment dismissal	No Jurisdiction 11(1)
68-440-33	Several issues, including domestic dispute	Declined 14(1)(b)
440-34	Divorce proceedings	No Jurisdiction 11(1)
440-35	Amendments to the Teaching Profession Act	No Jurisdiction 11(1)
440-36	Domestic dispute	No Jurisdiction 11(1)
440-37	Seizure of assets by landlord	No Jurisdiction 11(1)
440-38	Dispute with landlord	No Jurisdiction 11(1)
440-39	Domestic relations difficulty	No Jurisdiction 11(1)
440-40	Apportionment of taxes in real estate transaction	No Jurisdiction 11(1)
440-41	Administration of non-government organization	No Jurisdiction 11(1)
440-42	Registration refusal in private duty section of Alberta Registered Nurses Association	No Jurisdiction 11(1)
440-43	Pressure by several non-provincial institutions	No Jurisdiction 11(1)
440-44	Child maintenance dispute	Rectified
440-45	Contemplated civil action	No Jurisdiction 11(1)
440-46	Private family dispute	No Jurisdiction 11(1)
440-47	Terms of agreement for sale	No Jurisdiction 11(1)
440-48	Home purchase terms	No Jurisdiction 11(1)
440-49	Divorce proceedings	No Jurisdiction 11(1)
440-50	Employment conditions	No Jurisdiction 11(1)
440-51	Administration of estate	No Jurisdiction 11(1)

No Specific Complaint Made (13)

68-450-1	Dissatisfaction with results of agents	No Jurisdiction 11(1)
450-2	No Specific complaint	Declined 14(1)(b)
450-3	Incarceration by Police	Declined 14(2)(b)
450-4	Anonymous complaint	Declined
450-5	Various complaints against employer	Declined 14(2)(b)
450-6	Request for assistance to obtain employment	No Jurisdiction 11(1)
450-7	Request for information re procedures	Not Justified
450-9	Expropriation Procedures Act	Investigation
450-11	Taxation assessment dispute	Investigation
450-12	Non-payment of hospital bill	Declined 14(1)(a)
450-13	Hit and run accident	Abandoned
450-14	Not Specific	Investigation

No Specific Complaint Made (Continued)

450-15	Various complaints against individuals	No Jurisdiction 11(1)

Complaints re Decisions Courts of Law — Civil and Criminal (33)

68-460-1	Criminal conviction	No Jurisdiction 11(1)
460-2	Criminal conviction	No Jurisdiction 11(1)
68-460-3	Conduct of Crown Prosecutor	No Jurisdiction 12(1)(b)
460-4	Civil Court action	No Jurisdiction 11(1)
460-5	Loss of civil suit	No Jurisdiction 11(1)
460-7	Foreclosure Court Proceedings	No Jurisdiction 11(1)
460-6	Judgment in civil action	No Jurisdiction 11(1)
460-8	Legal Aid refused	Referred to proper authorities
460-9	Traffic conviction	Not Justified
460-10	Re appeal of criminal conviction	No Jurisdiction 11(1)
460-11	Refused Legal Aid	Abandoned
460-12	Criminal conviction	No Jurisdiction 11(1)
460-13	Divorce proceedings	No Jurisdiction 12(1)(a)
460-14	Criminal conviction	No Jurisdiction 11(1)
460-15	Criminal conviction	No Jurisdiction 11(1)
460-16	Proposed testimony of juvenile	Withdrawn
460-17	Family court judgment	No Jurisdiction 11(1)
460-18	Traffic conviction	No Jurisdiction 12(1)(b)
460-19	Summons issued under Highway Traffic Act	Not Justified
460-20	Denial of Legal Aid	No Jurisdiction 11(1)
460-21	Judgment in civil suit	No Jurisdiction 11(1)
460-22	U.S. Citizen in gaol	No Jurisdiction 11(1)
460-23	Press reports of criminal cases	No Jurisdiction 11(1)
460-24	Court decision re child custody	No Jurisdiction 11(1)
460-25	Appeal against criminal conviction	No Jurisdiction 11(1)
460-26	Sentence in criminal court	No Jurisdiction 11(1)
460-27	Game Act prosecution	Not Justified
460-28	Traffic conviction	No Jurisdiction 11(1)
460-29	Traffic conviction	No Jurisdiction 11(1)
460-30	Criminal conviction frame-up	No Jurisdiction 11(1)
* 460-31	Conviction of mentally ill son	Rectified

Complaints re Decisions Courts of Law — Civil and Criminal	(33) **(Continued)**	
460-32	Police report not fully presented to Court	Declined 12(1)(b)
460-33	Traffic conviction	No Jurisdiction 11(1)
Request for Assistance — No Complaint Involved	(22)	
68-470-1	Request for results of autopsy	Information supplied
68-470-3	Request for Legal Aid for civil suit	Advised of court procedure and limitations of Legal Aid
470-4	Procedure to initiate a criminal appeal	Information supplied
470-5	Legal advice requested	No Jurisdiction 11(1)
470-6	Legal advice requested	No Jurisdiction 11(1)
470-7	Request for interview	Abandoned
470-8	No complaint disclosed	Abandoned
470-9	Request for assistance for relatives	No Jurisdiction 11(1)
470-10	Information on assistance to appeal taxes	No Jurisdiction 12(1)
470-11	Request for Legal Aid	Not Justified
470-12	Request for authority re Law Society of Alberta	No Jurisdiction 11(1)
470-13	Request for assistance by Executor of estate	Abandoned
470-14	Domestic difficulties	No Jurisdiction 11(1)
470-15	Assistance re dispute with Federal Government	Referred to Federal Minister
470-16	Not Specific	Abandoned
470-17	Request for Legal Aid	Not Justified
470-18	Information on appeal legislation	No Jurisdiction 11(1)
470-19	Administration of deceased's estate	No Jurisdiction 11(1)
470-20	Racial discrimination	Referred to Human Rights Branch
470-21	Disposition of property	No Jurisdiction 11(1)
470-22	Request for assistance from Assistant Public Trustee	No Jurisdiction 11(1)
470-23	Employment regulations	Investigation
General Information	(3)	
68-480-4	Landlord lease form	No Jurisdiction 11(1)
480-5	Motor vehicle insurance claim	No Jurisdiction 11(1)
480-6	Remuneration to M.L.A.'s	No Jurisdiction 11(1)
Complaints re Universities	(3)	
68-490-1	Entrance examinations	No Jurisdiction 11(1)
490-2	Extension of probationary period of employment	No Jurisdiction 11(1)
490-3	Expropriation procedure	No Jurisdiction 11(1)

Appendix III

DEPARTMENT OF AGRICULTURE

67-100-3

The complainant holds a License from the then Department of Industry & Development to sell dairy farm supplies.

He has had severe setbacks in earning a living, including permanent injuries to himself which necessitated him giving up his previous employment of nineteen years. His wife succumbed to an illness of eight years; leaving him with two young children, one of whom he had to place in a foster home. He has earned his living selling dairy supplies on an established route. It was his hope to expand his sales to include livestock medicines, for which he applied for a License to the Department of Agriculture. His License was refused on sufficient grounds which I do not dispute in any way. I was impressed that his complaint to me was not in fact a complaint against Departmental decisions, but rather a request for assistance in solving his problem. Investigation was made, and while I could not in any way criticize the decision made by the Department, it was possible to arrange with the Department for a further application by the complainant and the assurrance that it would be given a sympathic hearing.

Therefore the application was heard again by The Livestock Medicine Advisory Committee and after due consideration was rejected.

Having obtained agreement to a further hearing for the complainant I could not question the eventual decision to deny the applicant's submission.

The storage and preservation of livestock medicines, some of which require refrigeration, is most important. The Livestock Medicine Advisory Committee have a very definite responsibility, to assure themselves that livestock medicines will be sold, only by those, who are in a position to comply with essential regulations. In the opinion of the Board, the complainant was unable to fully qualify for such authority.

Much as I would have liked to have seen this application succeed, considering the applicant's determined effort to support his family and himself, I could only conclude that the Committee's decision conformed to the requirements for the distribution of such medicine.

In investigating this complaint it was apparent that all that I could hope to do for the complainant was to obtain a further hearing for him after the submission of a new application. He submitted his application and he did have an opportunity to present his case before the Committee. So far as this Office is concerned I consider this complaint as rectified. Although the complainant was not successful in obtaining a License he did receive full additional opportunity to present his case and to have it considered.

DEPARTMENT OF AGRICULTURE

67-100-6

By terms of "Cattle Improvement Policy 'B' ", the Department of Agriculture undertakes to pay a bonus to the purchasers of Pure Bred Bulls bought at a Contributor sale. There are certain qualifications required of the purchaser, such as residence in the Province, and he must be a "bona fide" farmer.

There are also certain definitions laid down as to the meaning of "Contributor" sale; the five breeds of bull eligible; their age; inspection before the sale, etc. The bonus is ten per cent of the purchase price up to $50.00.

The requirement pertinent to this case is that applications from qualified purchasers, for the bonus must be received by the Department, within sixty days of the day of the sale.

The complainant had purchased the bull at a "Contributor" sale for $800.00. He qualified for a $50.00 bull bonus in every respect but one. His application was not received within sixty days of the date of the sale. His application was refused.

The complainant referred the matter to the Ombudsman, stating that although a representative of the Department had been at the sale with application forms for the bonus; there was insufficient notice of his presence given to those attending the sale.

The complainant claimed that he had not known that such a representative of the Department of Agriculture was present, nor was he aware of the sixty day clause. He felt an announcement should have been made publicly at the sale.

He eventually obtained an application form from the Secretary of the local Bull Association and forwarded it to the Department.

Investigation revealed that there had been an announcement to the effect that application forms were available. The announcement was made before the sale began, but the complainant was not present at that time.

It was further ascertained that there was some misunderstanding on the part of local officials, as to the sixty day limitation on applications for the bonus, and that either the complainant or his wife had, in fact, endeavoured to obtain an application form within the sixty day period. They had, however, encountered some delay at the local level.

My investigation satisfied me that the Department was not at fault, and had taken all reasonable steps to make known the availability of application forms at the sale.

I was also satisfied that the complainant was of the opinion that payment of the bonus was automatic, but did endeavour to comply with the requirements for application, as soon as he was aware of the actual policy.

Additional information was made available to the Department during the investigation which indicated to the Department the possibility of a reconsideration of the previous decision made.

I recommended to the Deputy-Minister that the Minister be requested to exercise his discretion in policy matters and that the complainant be given the benefits of any doubt.

67-100-6 (Continued)

Shortly thereafter I was advised that the Minister had approved the payment of the bonus, and I so advised the complainant.

I found the officers of the Department of Agriculture most anxious to ensure that any misunderstandings be clarified, and speedily rectified.

67-110-4

The complainant, who has a long history of controversy with Government at both the Federal and Provincial level, was charged under the Criminal Code with two offenses.

He complained to me, requesting me to take certain steps in connection with the prosecution against him, which were completely beyond my jurisdiction in every respect. I did, however, ascertain that he was represented by counsel.

In the Fall of 1967 he was remanded to an Alberta Hospital for mental examination, and his wife made a further complaint to me about his detention in a Mental Hospital. I ascertained that he had been properly remanded by a Court of Law, and the matter was therefore beyond my jurisdiction. I so advised his wife and again referred her to her solicitor for advice. I received a further letter from the accused's wife pointing out her inability to obtain further legal advice, due to the fact that she and her family were receiving Public Welfare. Under the circumstances I then advised her that I would at least endeavor to obtain for her the decision arrived at following her husband's mental examination.

I placed my request in writing before the Deputy Minister of the Department of Health, and I received a very full reply from him advising that the complainant had been brought to trial and was found unfit to stand trial on the evidence of two psychiatrists.

I was further advised in the same letter that on December 4, 1967 the complainant was transferred to detention, by warrant of the Lieutenant Governor under Sections 524 and 526 of the Criminal Code of Canada. He was detained in an Alberta Mental Hospital.

Having been detained by a Lieutenant Governor's warrant under the Criminal Code, the complainant was not entitled to an appeal to a Review Panel. Had he been medically certified under the Provinical Mental Health Act he would be entitled by right to such a review.

At the time I received this information there was consideration being given to placing before the Legislative Assembly some amendments to the Mental Health Act, the intent of which was, so far as I am aware, to provide a form of review for cases such as this one. It is my understanding that the draft legislation was not brought forward for consideration at the last Session of the Legislative Assembly, due to the fact that the Federal Government had under consideration, legislation which would achieve the same effect, and which it was believed would be placed before Parliament very shortly. In fact, however, the Federal legislation was not placed before the House of Commons for a year, and I am given to understand that the pertinent sections are contained in a draft bill which was tabled in the House for first reading in December of 1968.

When I finally communicated with the complainant's wife in December of 1967, I had every reason to anticipate that the amendments to the Provincial Mental Health Act would be brought before the Legislature in the forthcoming session. I advised the complainant's wife that if any legislation was brought before the Legislature, and if it was passed, authorizing an appeal for cases such as that of her husband, I would undertake to advise her at once.

This case has been brought forward for review from time to time, and I was finally advised on December 20, 1968 by the Department of the Attorney General, that an Order of the Lieutenant-Governor dated December 19, 1968,

67-110-4 (Continued)

required that the complainant be directed to the Minister of Health for certification under the Mental Health Act, and a Review Panel was to be set up. This procedure means that the complainant will be dealt with hereafter as a medical case, certified medically, and will be entitled to the full rights of review as laid down under the Provincial Mental Health Act.

The object of my early inquiries having been achieved, namely an avenue of review having been made available to the complainant in this case, the complaint is therefore rectified and the file closed.

I have commented elsewhere in this Report on this particular type of case. The situation remains that there is no statutory provision for an appeal, that is automatic or obligatory for patients committed to Provincial Mental Hospitals under a Lieutenant-Governor's warrant issued under the authority of the Criminal Code. The Department of the Attorney General has voluntarily established a review committee which can, and does, make recommendations to the Lieutenant-Governor. Such a committee was established as a matter of policy, and obviously in view of the lack of any statutory authority for an appeal otherwise.

I received the impression, however, that this type of review committee is only called to hear cases where there is some indication that the person who is being detained has recovered sufficiently to be permitted to be at large.

67-110-14

The complainant was charged on several counts of perjury during October, 1965. Preliminary hearing commenced on May 2nd, 1966, but on May 13th, 1966, the preliminary hearing was adjourned at the request of Crown Counsel until August 15th, 1966. The adjournment was requested to permit the Crown to make arrangements to take Commission Evidence from one witness in London, England.

Application was made to the Honourable, The Chief Justice of The Supreme Court of Alberta, in Calgary, for authority to take Commission Evidence in London, England. This application was made on June 21st, 1966, and it was granted.

The complainant advised that neither he nor his Counsel had been advised of the date of the application, and that by the time the Order was served on his Solicitors, it was too late to appeal, or to make representation on the question of costs.

The complainant further stated that he therefore instructed his Counsel to appear on his behalf before the Commission in London on June 28th, 1966. Counsel did so, only to have the matter adjourned until July 12th, 1966. The evidence of the witness in London was taken on that date.

Subsequently the preliminary hearing resumed in Edmonton on August 15th, 1966. It concluded on August 17th, and the accused, as he was at that time, was committed for trial to The Supreme Court of Alberta.

The complainant appeared for arraignment in September and November, 1966, and states that he appeared again in January and February, 1967. He stated further in his complaint that he was never formally arraigned.

On April 7th, 1967, the Crown entered a Stay of Proceedings on all counts.

On June 26th, 1967, the complainant instructed his Solicitor to apply to the Department of the Attorney-General for reimbursement of the expenses of his Solicitor, incurred in representing his client at the taking of Commission Evidence in London, England. This application, according to the complainant, was for transportation and subsistence only, and did not include legal fees. The total of such expenses was $702.55.

The Attorney-General, acting on the advice of his Departmental officers, declined to pay the above mentioned expenses.

The complainant made mention in his complaint, of previous evidence, given by the London witness in Toronto in 1965, which he alleges made the taking of Commission Evidence in London unnecessary.

It is not within my jurisdiction or competence to comment on the opinions or decisions of learned Counsel for the Crown.*

However, the proceedings against the complainant having been stayed, the advice given to the Attorney-General upon which the claim was refused, was in my opinion a matter of administrative decision and within my jurisdiction.**

It was necessary for me to seek out several legal precedents, some of which were already known to me. In this endeavour, and as a Solicitor for the

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* Section 12(1)(b) The Ombudsman Act
**Section 11(1) The Ombudsman Act

67-110-14 (Continued)

Office of the Ombudsman had not yet been appointed, I was very ably assisted by Solicitors of the Department of the Attorney-General.

My resulting recommendation was for an "ex-gratia" payment of $702.55 to the complainant.

My recommendation was accepted and by Order-in-Council the sum was approved. I received a cheque in this amount of $702.55 on November 5th, 1968. The cheque was forwarded to the Solicitor for the complainant, on behalf of his client.

67-110-18

This complaint although it was originally made against the Department of the Attorney-General was eventually revealed, by investigation, to be more related to the procedures established by the Department of Agriculture regarding the impoundment of livestock.

The complainant impounded a number of livestock owned by a Ranch Company, after sustaining damage to his crops from the stock, estimated in the value of approximately $300.00.

The poundkeeper subsequently released the livestock to the Ranch Company upon receiving a bond dated September 10th, 1964, involving an indemnity in the sum of $512.00. This sum included the damage claim of the complainant and the costs of the poundkeeper.

The bond was not honoured and therefore the complainant brought the matter to the attention of the Government. He was not reimbursed and he then complained to the Ombudsman. Investigation established that the poundkeeper was officially appointed pursuant to Section 8 of The Improvement Districts Stray Animals Act. In view of the Legislative provisions of that Act I came to the opinion that, as poundkeeper, he was acting as an agent of the Province.

In addition to those things which he was required to do by Legislation, the poundkeeper sought the guidance of the Department of Agriculture. Apparently before releasing the livestock he contacted one of the Livestock Inspectors of the Department of Agriculture, to ascertain whether or not the bond offered by the Ranch Company was satisfactory. He did not receive any advice or instructions to refuse the bond and he subsequently accepted it and released the livestock on September 10th, 1964.

Apparently in his position he had received no formal instructions or training whatsovere prior to September 10th, 1964, as to the legal requirements for any bond.

He stated that his predecessor in the job had shown him how to fill out the books and the necessary forms, dealing with his official position as the poundkeeper. However, he stated no one at all had advised him about bonds. His explanation for accepting the bond in question as a legal bond was that as it was completed before a Justice of the Peace, he thought it was all right.

Unfortunately there were defects in this particular bond. Legal action was commenced by the Government against the Ranch Company in question, and against the two persons whose signature appeared on the bond. The legal proceedings were not carried through to completion against the individual Defendants because of the defects in the bond. The Improvement Districts Stray Animals Act, authorizes a poundkeeper to release an impounded animal to one, whom he believes to be the owner, upon receipt of a bond executed by two good and sufficient sureties. The discretion as to whether the bond was sufficiently satisfactory to protect the individual who commenced the impoundment proceedings as well as the poundkeeper's costs was left to the discretion of the poundkeeper.

The Government authorities conceded that there were in fact defects in the bond and the legal proceedings were pursued in the name of the poundkeeper solely against the Ranch Company.

67-110-18 (Continued)

The subsequent Judgment against the Ranch Company proved to be quite worthless as it could not be executed.

I noted that subsequently instructions were sent by the Department of Agriculture to all poundkeepers, recommending that they refuse to accept uncertified cheques or bonds for pound fees or damage claims. They were advised that they were only required to accept legal tender in payment of such charges, before being required to release impounded livestock.

The complaint which I had received was of course only for the individual who impounded the cattle originally. I recommended, however, to the Department of Agriculture that both the complainant and the poundkeeper should be reimbursed for their combined losses in the sum of $512.00.

I was advised in due course that both the complainant and the poundkeeper would be reimbursed according to their respective interests.

This complaint will be shown as "Rectified", as soon as I receive word that the $512.00 has been paid.

DEPARTMENT OF THE ATTORNEY GENERAL

67-110-19

The complainant in this case had been employed as a guard in a Provincial Gaol. He was released from his employment and complained to the Ombudsman that his release was unjust and possibly the result of personality differences.

Investigation revealed that the complainant had taken up his complaint with the Civil Service Association, but as that Association established that he was a temporary employee not yet permanently employed, he was subject to suspension or discharge without the right of appeal to the Joint Council. This procedure is in accordance with established policy.

Conversations and correspondence with those officers of the Attorney General's Department, having the responsibility for the administration and personnel of Provincial Gaols' staff, indicated that, while the complainant had in no way committed any offences worthy of disciplinary procedure, his temperament and abilities were such that it was not considered that he would likely make a successful guard.

I did, however, find out at the same time that efforts were being made to obtain other employment for this man in the Provincial Gaols Service, and that he had been interviewed in this regard.

The complainant had had a trade before becoming employed as a Prison Guard and the authorities were able to employ him in one of the Provincial Gaols in his former trade. I communicated with the complainant after I found that he was actually employed in his new position, advising him that I trusted the arrangement was to his satisfaction. I heard nothing further from him and I have therefore concluded this file as rectified.

I should point out in this instance that I was much impressed by the effort which was made by those officers of the Attorney General's Department directly responsible for the supervision of Correctional Institutes, to assist this man in finding employment for which he was qualified, in the Government Service.

67-130-5

The complainant is a Psychiatric Nurse who was an employee of the Department of Public Health from August, 1964 until she was suspended in May of 1967 with a recommendation for dismissal. There were in fact two suspensions on the same date, the other of which was referred to in my Annual Report for the year 1967, and outlined in the summaries under the Department of Health, 67-130-4.

The two nurses received identical letters of suspension. They both entered an appeal. There was a hearing before an Appeal Board in each case. The first nurse was reinstated as reported last year. The complainant, on the other hand, was discharged from the Government Service by Order-in-Council following her appeal from the suspension. She then complained to me in October of 1967.

Investigation revealed that there were many similarities in the general complaints against the two nurses, both of whom were employed in the same hospital. The complaints against them dealt, for the most part, with their treatment of patients, their failure to comply with directions received, and other matters.

The letters of suspension which they received were identical and the complaints were outlined in rather general terms. Neither of the nurses apparently received anything more specific as to the complaints against them until the appeal hearings were held. Both nurses retained the same solicitor to represent them. They were offered the alternative of resignation.

At first they agreed to resign to avoid the stigma of dismissal, but later repudiated this agreement. During this period the appeal hearings were suspended, but were resumed on behalf of the first nurse when she declined to resign. At that hearing she was represented by Counsel, who had an opportunity to see the actual witnesses against his client and to cross examine them on their testimony. As has been mentioned previously, this nurse was subsequently reinstated.

The decision which was reached concerning the proceedings to be followed in the appeal hearing of the second nurse, the complainant in this case, did not include the right to face her accusers in person, nor was there an opportunity to cross examine them on their evidence. The evidence brought against her consisted, in the main, of written reports. In fact, one witness, whose written report was critical of the complainant, was absent on leave and had not been personally interviewed by the Appeal Board, or any person acting for the Board.

I found that I was not called upon to deal with the merits of the actual complaints against the complainant. I reached my conclusions on the procedures which had been followed.

Considering the similarity of the charges against the two nurses; the identical letters of suspension which they had received; the fact that they were both suspended on the same date and from the same hospital; and the fact that they had both retained the same Counsel, who had entered an appeal on behalf of each of them, gave me reason to anticipate that there would be some similarity in the appeal procedures in each case.

67-130-5 (Continued)

On the contrary, I found that in the first case the nurse had had full opportunity to face her accusers, and to cross examine them, through her Counsel, under oath. The final results had been in her favour.

In the case of the second nurse, she was not given the opportunity of facing her accusers nor cross examining them under oath. The evidence against her was given in a written summary of the complaints against her, and to which she could only make denials. It was also indicated to me, that the appeal procedure of the second case was the one which is usually followed, and that the procedure in the first mentioned case, including the right of Counsel to cross examine, was an unusual procedure.

The hearing of the first case had resulted in reinstatement, while the appeal hearing in the second case had resulted in the discharge from the Government service of the complainant. I came to the conclusion that a reasonable man might have reason to suspect, that the opportunity of a full and complete defense afforded to the first nurse, could have been responsible for the verdict in her favour, while the lack of such full defense, could have resulted in the unfavourable verdict in the case of the complainant.

I communicated with the Provincial Treasurer who has the responsibility for the Public Service Commission. I presented my views, and I recommended that the complainant be granted a full and completely new hearing before a new and independent Committee, in which case the witnesses, who had reported against her, should be available to give evidence, and to be subject to cross examination. I asked that the record of the proceedings in the case of the first nurse, as well as my own report, should be available to the Committee. I further recommended that if such a hearing was granted, the complainant be entitled to be represented by Counsel.

Alternatively I recommended that the complainant be reinstated and employed in some hospital, other than the one in which she had been formerly employed, and that her full salary be reinstated from the date of her suspension.

I suggested that consideration should be given to a study of the complete appeal procedure, which deals with the appeals of members of the Public Service of the Province, who are suspended or discharged, or otherwise accused of offenses involving disciplinary procedures. I suggested that such a study be done, with a view to the establishment of standard procedures. Such standardization, I believe, would avoid the wide variance which had occurred in the two appeal procedures referred to in this report, and should be more satisfactory, when it is considered that the entire careers of Public Servants may well be involved. Copies of my report and recommendation were forwarded to the Honourable, the Minister of Health.

In May of 1968 I was advised by the Provincial Treasurer that my recommendation had been considered by the Executive Council of the Government, and it had been decided to accept my alternative proposal of reinstatement in some other hospital, provided that the complainant was prepared to accept the position offered to her by the Department of Public Health, and that payments made to the complainant by the Department of Public Welfare since the date of her suspension be refunded. Her salary was of course to be reinstated from the date of her suspension.

I conveyed the views of the Executive Council to the complainant and to her solicitor, and the conditions of re-employment were accepted without question.

67-130-5 (Continued)

I was subsequently advised by the office of the Public Service Commissioner that the complainant had recommenced employment at an Alberta Hospital on July 1, 1968.

The complaint was therefore rectified without financial loss to the complainant.

DEPARTMENT OF HIGHWAYS

67-140-8

This complaint was against the Department of Highways for having declined to pay compensation from what is known as the Motor Vehicle Accident Claims Fund.

The complainant stated that his automobile had been parked in front of his home where it and another car were both struck by a passing car and damaged.

Police investigation revealed the offending car to have been unlawfully removed from a parking lot, and to have been driven by an unlicensed fifteen year old boy. At the time of the accident, the boy was already being sought by the Police for a breach of the terms of a previous probation. The boy was brought before a Juvenile Court again where, due to the new offenses, he was again found in the state of delinquency, and given one more probation.

The complainant's insurance policy had a $100 exemption clause, so that he could not claim for the first $100 of damage to his car from the Insurance Company.

The damage, however, was greater than $100, and he applied to the Provincial Department of Highways for compensation.

In accordance with the usual procedure, the Department wrote a letter to the offending driver, apparently unaware that he was a juvenile of fifteen years. The letter asked whether or not he accepted responsibility for the accident. Had he replied and accepted responsibility, it is my information that a payment would have been made from the Motor Vehicle Accident Claims Fund to the complainant. The Department would then have made a claim upon the offending driver, and at that time, would have found out that they were dealing with a fifteen year old juvenile, who could not be held financially responsible. In this particular case, there was no hope of any collection from his parents either.

In any event, the Department then wrote a customary letter to the complainant, advising him that he would have to obtain a Court Judgment against the offending driver before a claim could be paid from the Motor Vehicle Accident Claims Fund. The maximum amount which the complainant could have claimed from the Fund would have been $50. Very obviously, it would have been ridiculous for him to have endeavored to go to Court to obtain such a Judgment, considering the legal costs involved.

His situation was made even more awkward by the fact that he was not in a position financially to have his car repaired. He needed it to go to his work, and the car had remained in his yard for some months, due to his inability to have it repaired. I was able to place the situation, in which the complainant found himself, before the Deputy Minister of Highways, and after some further discussion with the Solicitor for that Department, he advised me that the Deputy Minister would recommend to the Minister that the complainant be reimbursed in the sum of $50.

I was, in due course, advised that the money had been paid to the complainant, who expressed his appreciation in a letter to me. The complaint was, therefore, shown as rectified and the file closed.

67-160-3

The husband of the complainant operated a moderate trucking and transport company. He was very severely injured in an automobile accident, and his injuries were such as to require hospital and medical attention over a long period of time. A lengthy period of convalescence was to follow during which time he would not be able to run his business.

The complainant took over the management of the business herself, but ran into severe difficulties, to a point where the wages of employees remained unpaid, until eventually several of the employees took civil action to recover their earnings.

At the same time the complainant found it necessary to apply for Social Assistance for herself, her husband and a small baby. Social Assistance was provided for this family.

The officers of the Board of Industrial Relations, a Board which comes within the purview of the Department of Labour, took prosecution action against the complainant to recover the wages of employees of the company. Such a procedure is provided for by law whereby the Board of Industrial Relations takes such action to assist employees in recovering their wages from employers. Some of these prosecutions were entered and completed, before the complainant was placed on the Social Assistance rolls, and other prosecutions commenced afterwards.

At the time the complainant made her complaint, through a firm of solicitors who were endeavouring to assist her with the affairs of her husband's company, there were several outstanding fines and costs against her. The result was, that when the complainant brought her problems to the office of the Ombudsman, she was in the position of receiving Social Assistance from the Department of Welfare on one hand, while undergoing legal action directed against her to enforce payment of fines and costs. I took the matter up with the Department of Public Welfare, the Chairman of the Board of Industrial Relations and the Deputy Minister of Labour. Preliminary investigation revealed that the Board of Industrial Relations had not been made aware of the fact that the complainant had sought and received Social Assistance, at the time the prosecutions were being proceeded with. As soon as I advised the Chairman of the situation, the forthcoming prosecutions were immediately suspended for a period of three months. With the assistance of a representative of the Department of the Attorney General, to advise the Board on legal procedure, a meeting was held with the representatives of the Government departments involved. The result was, that without my being required to make any recommendations to a Minister, all further prosecutions were dropped. An application was made for an Order-in-Council to strike out the balance of any unpaid fines and costs, and to refund to the complainant the amount of fines paid since the date on which Social Assistance had been received.

The complaint was therefore Rectified, and my inquiries satisfied me, that had the Industrial Relations Board been aware of the fact that the complainant had had to seek Social Assistance, steps would have been taken to relieve the complainant of the problem of further prosecutions. The role of the Ombudsman in this inquiry was to bring the situation to the attention of those who were able to remedy it, and to keep the complainant advised as to the progress made.

DEPARTMENT OF LANDS AND FORESTS

67-170-5

The complainant in this case is a former coal miner. He complained that a house which he had owned, and which was built on Crown property, under lease to a private coal company, had been sold, following the termination of the lease, without his knowledge, and before he was given a reasonable opportunity to move it off the property. For a number of years he had endeavoured to obtain financial recompense from the Department of Lands and Forests without success. His solicitors, who were of the opinion that no further avenues of appeal were open to him, referred him to the Ombudsman.

Investigation revealed the following information. In 1953 a Townsite Lease was issued by the Department of Lands and Forests to a colliery. The lease was for a term of 21 years from the first day of February, 1953.

The complainant, an employee of the company as a miner, built a stucco house and garage on the lease, which is recorded in the Company's records, as Building #158, in the name of the complainant.

In 1957 the Inspector for the Department of Municipal Affairs directed a letter to the Deputy Minister of Municipal Affairs, with which he forwarded a corrected list of assessments for homes on the leased Crown property, and in which he referred to the "ownership" of "private houses" and garages for 1957. The complainant's name, house and garage were on that list. It seemed a reasonable assumption that he was regarded by the Department of Municipal Affairs as the owner of the house and garage. The Department of Municipal Affairs confirmed to me in writing that the list indicated that a house and garage were owned at that time by the complainant.

The complainant was billed for school tax in 1957, and I came into possession of a Tax Notice from the Department of Municipal Affairs dated at Edmonton, November 25, 1957. The Tax Notice refers to the complainant as the "owner" of the improvement located on Lease 28 and further stated that he was "liable" for payment of taxes in 1957. He paid his taxes. Receipt for payment of the taxes is acknowledged by a letter by the Colliery, and it acknowledges the complainant as owner of the house. I came to the conclusion that as far as the Department of Municipal Affairs was concerned, the complainant was the "owner" of the house and garage and subject to taxation on these improvements.

The complainant left the employ of the Colliery, and left the area. He rented his house, and stated to me that he left a notice on the door, on the wall, and on the ceiling, giving his forwarding address. There was a question later as to there being no way to get in touch with him to notify him of the cancellation of the Lease. There was some evidence from persons, who had said they had not seen the notice on the door, but on the other hand there was no evidence that it was not there.

In October of 1961 the Colliery communicated with the Government of Alberta, stating that it wished to surrender its leases with the Crown. The particular lease, with which this complaint is concerned, was cancelled effective December 31, 1960. Thus the Lease was cancelled retroactively 9 months and 20 days before the application to cancel it was submitted. I am advised that this procedure is not unusual, but I did find it confusing.

The conditions of the cancellation of the Lease required, among other things, that a public notice be placed in an Edmonton and a local paper, notifying private owners of the action being taken, and the notice was to have received

the approval of the Director of Lands of the Department of Lands and Forests. If these provisions were met, the Colliery was, by the notice, relieved of all further obligations insofar as the Department was concerned. The notices were undoubtedly placed in the newspapers but the complainant, by this time no longer a resident of the district, alleged that he did not see the notice and there is, of course, no evidence to dispute his claim. He subsequently visited the area and, according to his own story, was told by the Caretaker of the property that the houses on it were to be moved. At that time his house and garage were still there.

The Colliery made a contract with a construction company for demolition and clean up of the Lease, which was to be "under the direction, control and supervision of the local District Forester." The Colliery contracted to place in trust with the Crown a cheque in the amount of $16,000, said cheque to be released to the independent contractor upon completion of the demolition and clean up "to the local District Forester's satisfaction" (a Provincial Government employee). I noted particularly that the demolition and clean up was to take place under the direction of a Provincial Government employee (the District Forester). Furthermore, I could find no authorization in the contract for anyone to sell any of the houses on the Lease.

The complainant advised that when he learned during his visit that the houses were to be moved, he decided to move his house to a nearby town, and to sell it. He stated that he employed a house mover to move his house for him. He himself was to clear the brush from the house to the nearest road, to facilitate the moving of the house. An Investigator from my office spent some time endeavoring to locate the house mover and finally ascertained that he had died in 1963. It was thus not possible to confirm the complainant's story that he had intended to move his house.

The complainant stated that he further returned to the area two or three weeks after he had arranged to have the house moved, in order to commence the brushing previously referred to. He found that his house and garage were gone. He stated that he had, on his previous visit, placed a notice on the front door, advising that the house was to be moved. Correspondence from the Department of Lands and Forests indicates some knowledge of the presence of that notice on the door. The complainant subsequently learned that his house and garage had been sold, and moved to another community not far away. The house had changed hands one or more times since it was first sold, by the time the complaint was received at my office. It is now used as a residence by the present owner.

The complainant's claim for compensation for the loss of his home, which was made to the Department of Lands and Forests and for which he had employed solicitors, was not accepted. The position of the Department of Lands and Forests was that the complainant had no right or claim to the house he had built, and therefore no claim against the Crown. The Department's view appeared to be based on the following statement which it had made in writing to the complainant's solicitors:

> "Your client must be presumed to have been fully aware of the following facts if and when he undertook to build the house he now claims:
>
> (a) the land on which it was situated was not owned by him;
>
> (b) he had no permission or authority of any kind to build it on the lease; and

(c) he had no right, express or implied to remove it at any time."

There is no question as to (a). As to (b) it appeared that the Department of Municipal Affairs was taxing the complainant as the owner of a house and garage, while the Department of Lands and Forests took the view that he had no permission or authority of any kind to build on the property. As to (c) the complainant is being told by the Department that he had no right, express or implied, to remove the house at any time, and on the other hand, the same Department has advised the Colliery that the termination of the Lease was conditional on notices being placed in the Press to owners of property, so that they might have an opportunity to remove their houses. In fact, the complainant was subsequently advised by a letter from the Government, that the matter was widely publicized, and "that you had ample opportunity to make arrangements with respect to your house." This latter statement hardly corresponds to the opinion expressed by the Department of Lands and Forests that he had no right, express or implied, to remove the house at any time.

There were some other conflicting statements made in writing to the complainant or his solicitors. For instance, he received one letter which said "the building was sold by the contractor pursuant to the terms of his contract . . . ". There is nothing in the contractor's contract that in any way authorizes the sale of the homes on the property. The contract refers to "demolition and clean up."

I came to the conclusion that the complainant was faced with a situation in which Government responsibility was being declined, at least partly, because the complainant had failed to remove a house from Crown land, which the Department of Lands and Forests had said he had no right to remove at any time.

It was my opinion that in a matter such as this, Government must speak with one voice only, and that the complainant was entitled to the doubt engendered by any seeming conflict of opinion between Government departments.

I therefore communicated with the appropriate Minister, expressing my view that the decision was unreasonable,* and that it was based wholly or partly on a mistake of fact.**

I further recommended that compensation be granted to the complainant and that an effort be made to appraise the value of the property at the time it was sold.

Shortly afterwards, following discussion with officers of the Department, it was realized that to attempt today to appraise the value of the property at the time the house was moved would be extremely difficult. I agreed that it would be closer to accuracy to accept the appraisal by the Department of Municipal Affairs for taxation purposes, at the time that the complainant was paying taxes on the property. It was also understood, that when the Lease was cancelled, and there was a requirement to remove the house from the property, at considerable cost, its value, as it stood on the property, would have deteriorated sharply.

Shortly thereafter I was advised by the Minister that the Department of Lands and Forests, without any admission of liability, was prepared to recommend to the Lieutenant-Governor in Council that the complainant be indemnified by a specified sum of money. Having regard to all the information available to me, I considered the offer to be fair and just.

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* Section 20(1)(b)—The Ombudsman Act
** Section 20(1)(c)—The Ombudsman Act

67-170-5 (Continued)

At some time during the inquiry the complainant had retained a new solicitor. I placed the Minister's offer before the complainant's solicitor. He was not prepared to accept it on behalf of his client. The complainant therefore made me a counter proposal at a considerably higher figure. I was not prepared to support this latter figure, and so advised the Minister and the complainant's solicitor. Subsequently the solicitor, on behalf of the complainant, entered civil suit against the Government, thus automatically removing the case from my jurisdiction.***

I accordingly advised the complainant's solicitor that I was closing my file, and I advised the Minister of the Department concerned, at the same time notifying him that I was showing the complaint as Rectified.

***Section 12(1)(a)—The Ombudsman Act

DEPARTMENT OF LANDS AND FORESTS

67-170-6

The complaint in this case was against the practice adopted by the Department of Lands and Forests of releasing individual lots in various places of the Alberta Forest Reserve for the purpose of the erection of summer cottages by individual citizens. The practice is usually, where single lots are concerned, to call for tenders for the lease, and to grant the lease to the person submitting the highest bid. The complainant felt that this practice was discriminatory in that it gave an advantage to the more affluent.

Investigation revealed that when the lots in an individual area are first approved to be leased to the public, a public announcement is made and a draw is held which can be attended by those interested. The lots are thus disposed of equitably to the public in the order in which their names are drawn. This is the procedure which is normally adopted when a new area or subdivision is opened up for cottages. Any lots which remain vacant after the initial draw are then available to the first applicant whose application is received at the Edmonton office of the Department of Lands and Forests.

Subsequent to the granting of initial leases, some of the leases may be cancelled by the Lessee, who has changed his mind, or it may be cancelled by the Department if the Lessee has not lived up to the financial or other terms of his lease. These individual leases then are available to interested persons, and the policy which has been adopted has been to lease the property to the person submitting the highest cash tender.

It was this latter situation which the complainant was concerned about. His view was that a draw should be held every time one of these lots is available.

However, I satisfied myself that such lots are becoming available all over the province at completely irregular intervals. To endeavour to hold a new draw every time one of these lots was available would have called for the setting up of a complete procedure for operating the draw, and for the attendance of officials of the Department at each of the draws. It was obvious that the Department officials would therefore be obliged to run all over the province with considerable frequency, and would be obliged to organize and operate draws very frequently. It was most obvious that the whole procedure would have been completely uneconomical and of considerable burden to the taxpayer.

The Legislature has seen fit under the Public Lands Act to give the Minister of Lands and Forests a broad discretion to decide the manner in which such lots shall be disposed of, and to settle disputes which may arise between persons applying for such lots as he considers best. He is specifically authorized to require the submission of tenders if he sees fit.

Considering the Minister's powers of discretion and the fact that the original draw for such property provides initially an equal opportunity for anyone to make an application for such a lease, I came to the conclusion, that the policy adopted to dispose of individual lots as they subsequently became available, was as economical and reasonable as could be expected. The complaint was therefore "Not Justified."

DEPARTMENT OF LANDS AND FORESTS

67-170-10

The complaint in this matter was received from the solicitor for the complainant, a Construction and Engineering firm. The complainant's firm had successfully tendered for the construction of a bridge for the Department of Lands and Forests.

Differences arose between the Department and the Construction Company when the contract was completed. These were of a sufficiently severe nature to be heard eventually by a Board of Arbitration set up under the Alberta Arbitrations Act. The merits of the case are, of course, no concern of the Ombudsman. Suffice it to say that the Umpire awarded the Company a sum in the neighborhood of $45,000.

Several weeks later, when the complaint was made to the Ombudsman's office, it was pointed out to me by the solicitor for the complainant that there were a number of outstanding claims against this award, which might or might not have merit. He had some reason to believe that the Department of Lands and Forests was withholding distribution of the award until it had satisfied itself as to its own position in connection with these various claims. The solicitor gave me his opinion that the Department had no power to judge on the conflicting claims by various claimants. It was his opinion that such decisions were clearly a matter for a Court to determine.

He therefore recommended to me that I urge the Department to pay the entire sum awarded into Court under the Rules of the Supreme Court of Alberta "Interpleader Rules". Such action, it was stated to me, would immediately discharge the Department of responsibility to all claimants, and the Court would then decide the merits of the various claims and apportion the money accordingly. The matter was further complicated by the fact that the complainant's firm had gone into liquidation.

I communicated with the Department of Lands and Forests, outlining the complaint as it had been presented to me by the complainant's solicitor. After some discussion of the Department's position, it was agreed that the Department would deposit into the Court the required sum, in order that the claimants might make their claims directly to the Court and the Court would be responsible for distribution. There was a further minor misunderstanding concerning a small amount of money against which the Department felt it had a claim. This situation was brought to my attention by the complainant's solicitor and I again communicated with the Department of Lands and Forests.

I was, in due course, advised that the Department of Lands and Forests had deposited the full amount into Court to the credit of the proceedings. The complainant's solicitor was also advised by the Department of the deposit of the monies. In due course a letter of appreciation was received from the complainant's solicitor. The file was therefore closed and the complaint shown as "Rectified".

67-330-6

The complainant questioned the manner in which the Public Trustee had administered certain funds, which had been received by the Public Trustee on behalf of the complainant, at a time when the complainant was below the age of twenty-one. The Public Trustee had administered the funds for a period of approximately two years until the complainant became twenty-one years of age. The only item which the complainant questioned was an administration fee.

I had satisfied myself that the administration fees charged in this case were quite reasonable, and were provided for under a tariff of fees laid down by statute.

The complainant had a further discussion with a member of the Ombudsman's staff, and decided he was not anxious to press the investigation, and that he was prepared to settle the estate as it stood, and with the fees for administration as assessed.

The complainant gave a written letter withdrawing his complaint and the file was therefore closed and shown as "Complaint Withdrawn".

COMPLAINTS AGAINST PRIVATE BUSINESS

67-420-10

The complainant had obtained a loan from a Bank under the Farm Improvement Loans Act, a Federal Statute. He was admittedly in arrears with his payments, and had been advised by the Bank, by double registered mail, that he must either make payment by a certain date in May, 1967, or voluntarily surrender the security, which had been put up for the loan. The security in this case consisted, in part at least, of a Cockshutt tractor. The complainant did not make a payment by the deadline, and he complained to me that on the 8th of July, 1967 representatives of the Bank came to his farm when he was absent, and indeed when there was no one on the property whatsoever, and removed his tractor. The complainant felt that the procedure was illegal, because he had gone to the Sheriff and had been advised the Sheriff knew nothing of the seizure.

He further complained that at the time the seizure was made his house had been entered, and a note left for him on the television set, advising him of the seizure. I have seen the note and it is a handwritten note on a piece of plain paper, dated July 8, 1967. It is addressed to the complainant and it says "With reference to our demand for payment of your loans, we found it necessary to repossess your Cockshutt Tractor, Serial #..... Letter will follow." The note was signed simply with the name of the Bank and the town in which the particular branch was located. There was no signature of any individual person. The complainant was subsequently advised, in writing, by the Relief Manager of the Bank with which he dealt, that the Bank had indeed effected the seizure of the tractor, and would be selling it in a short time, unless the loans in full, and the cost of seizure were paid by the 25th of July. There was, therefore, no question that the seizure had in fact been carried out by the Bank.

What the complainant neglected to inform me was, that the tractor was subsequently removed, stealthily, from the lot on which the Bank had stored it, and disappeared completely, until it was recovered by the R.C.M.P. on a farm in the same general area in which the complainant lived.

I commenced my investigation in the direction of ascertaining whether or not the seizure had been carried out under the authority of any Statute of the Province of Alberta. Had such been the case I would have been very interested indeed. One of the unsought and more dolorous duties, which I was sometimes required to carry out during my early career in this province was to execute "Warrants of Distress". Such operations were not calculated to bring about a high degree of harmony between the Police and the public, and therefore were usually delegated to some Constable sufficiently junior as to have no one else to whom he could pass his unwelcome chore.

We were, however, well grounded in the proper procedures for effecting such seizures. We were, of course, always able to produce proper legal documents authorizing the seizure. We were particularly well instructed as to the allegations of theft, or other behaviour, which could be made against us, if we entered unoccupied property without having neighbors or other completely independent witnesses with us, so that we could not be accused of removing anything more than our Warrant authorized. We also understood the necessity of a receipt for the seized goods, describing the condition they were in when removed. We were particularly well instructed that to enter upon closed premises, and in particular a dwelling house, without proper legal documents, which we could produce if called upon to do so, might well be grounds for criminal charges against us. My interest in ascertaining whether or not there was

67-420-10 (Continued)

a Provincial Statute, which authorized the carrying out of the seizure in the manner in which this one was carried out is therefore understandable.

My inquiries at the Bank, which extended to me its fullest cooperation in this inquiry, made it quite clear that the seizure had been carried out legally under the provisions of Section 88 of the Bank Act. The Bank Act is a Federal Statute and overrides provincial legislation. By virtue of this legislation the employees of the Bank may, without the intervention of a Sheriff or Sheriff's Bailiff, execute seizures to recover security, despite any requirements of the Provincial Seizures Act. The procedures as laid down by the Provincial Statute are considerably more strict.

Whatever may have been my personal views as to the entering of a man's home in his absence without documentary legal authority in one's possession, the fact remains that the procedure is apparently authorized by virtue of a Federal Statute, namely the Bank Act, and the complaint was therefore outside my jurisdiction. However, during my inquiry I was advised by the Bank, that it understood, that the Department of the Attorney General had instructed the Provincial Sheriffs and Bailiffs not to act for banks under the Bank Act. My inquiries at the Department of the Attorney General revealed that as a matter of policy Sheriffs and Bailiffs of the province are not permitted to work independently for the Banks.

The layman's view of such a situation may perhaps be exemplified by the view of the complainant, when advised that I had no jurisdiction over Federal matters. He wrote me asking me to discontinue the investigation and return his documents to him. He stated that "It appears time for us farmers to take the law in our own hands, . . .". I have had no further report as to his success.

NO SPECIFIC COMPLAINT

67-450-18

The complainant in this case advised that almost ten years before, while serving a sentence in a Provincial Gaol in another province, he became involved in a drinking incident with at least two other inmates. The spirits consumed were methyl alcohol. Two of the inmates died and the complainant stated that he completely lost the sight of one eye and was left with only partial vision in the other eye. He was treated in hospital in the other province and released, after which he received welfare grants in that province until he returned to the province of Alberta, where he was residing at the time of the complaint. He was in receipt of Social Allowances at the time he made his complaint.

His complaint to me was an omnibus complaint and not all the items were matters within my jurisdiction.

The complainant felt that if he had received medical attention earlier, all or part of his sight might have been saved, and he felt he had a strong case for compensation. Whatever claim he may have had lay in another province and was completely outside my jurisdiction. I ascertained that he had had legal advice and in fact had consulted members of the Federal House of Commons in connection with his plight.

His next complaint dealt with the fact that he was receiving his welfare in this province in the form of vouchers rather than by cash. His rent and food allowances were received by voucher and he received a small amount of cash about the middle of each month. He felt that he could shop more cheaply and generally more satisfactorily if he received all his allowances in cash. There are those who quite understandably, feel very keenly the affront to human dignity, when they are required to present vouchers in various stores for groceries and supplies, or to face landlords who complain about the time consuming red tape involved in the voucher system. I find that the Department of Public Welfare is fully cognizant of the demeaning effects of such a system. However, there are those persons in receipt of Social Allowances, who have shown, that if given cash in lieu of vouchers, they will convert it to uses for which it was not intended, even to the depriving of their own children of the necessities of life. In this particular case I satisfied myself that for several good and sufficient reasons the Department could not be more lenient than it had.

The complainant also raised the question of a disability pension and I looked into the possibilities of such a pension. I inquired of the Department of Public Health, as well as the Department of Public Welfare. I ascertained that as of January 1, 1968 the Provincial Welfare Department discontinued the categorical disability pension program, and help to any disabled person is in the form of Social Assistance, which is offered in the same manner to any eligible applicant.

There were conflicting views as to this man's ability to undertake some form of employment. He regarded himself as unemployable due to his disability and to his record. The officers of the Department of Public Welfare feel that there are positions in which he could be employed. The fact remains that at the time he communicated with me, he was unemployed and had been unemployed for a considerable period of time.

His major complaint, of course, I could not deal with as it lay outside my jurisdiction and in the jurisdiction of another province. Having satisfied myself that he was receiving Social Allowances in this province and in no way was being discriminated against in respect to Social Allowances, I wrote to him

67-450-18 (Continued)

explaining the amalgamation of the disability pension with Social Allowances, and I also wrote to him explaining why I did not feel that I could recommend to the Department that the voucher system be abolished in his case. My second letter was returned, address unknown, in April of 1968 and since that time I have heard nothing further from the complainant. I have, however, satisfied myself that he had no justifiable complaint against any department of the Government of the Province of Alberta.

ALBERTA GOVERNMENT TELEPHONES

68-260-1

The complainant, who was a subscriber to the Alberta Government Telephones, became bankrupt. His telephone service was immediately withdrawn by the Alberta Government Telephones. In due course, the customer was given the opportunity to reacquire the telephone services upon payment of a cash deposit of $25.00, together with a reinstallation charge of $5.00. It was also required that his wife become responsible for payment of the account.

The complainant alleged that he was not indebted in any way to the telephone company, nor had he been delinquent in paying his telephone bills, and he objected strenuously to the termination of his service, and to the charges for reinstallation, as well as a cash deposit.

My enquiries indicated that the policy of the Alberta Government Telephones is, that upon receiving information that a certain person had become bankrupt, the telephone service is discontinued. If service is required in the same premises, it must be in the name of a responsible adult, other than the person in bankruptcy. The requirement for a deposit from the party applying for the new service, is based entirely upon the credit rating, or the ability to pay of the individual concerned.

Normally the company will not provide service to a person in bankruptcy unless there are extenuating circumstances. The $25.00 was required in this case from the subscriber's wife because of her credit rating.

I was advised by the telephone company, that it was their intention to review the payment performance of the complainant's wife for the next three months, and should no problems be encountered with having the account kept up to date, consideration would be given to refunding the $25.00 deposit.

I have been advised by the Alberta Government Telephones, that the company will allow at least 48 hours for some other person to be responsible for the account, or a reasonable deposit made, failing which the telephone services will be disconnected. In this case, in view of the circumstances under which the telephone was disconnected, the Alberta Government Telephones credited, subsequently to the complainant's account, the $5.00 reinstallation charge that initially had been paid.

I could not agree with the complainant's contention that the $25.00 deposit should be returned to him. I felt it only reasonable, considering that he was a bankrupt, that the company had a right to protect itself by requiring a modest deposit. The case was therefore rectified insofar as this office was concerned.

However, the policy as outlined to me by the company, still prevails.

During my investigation, I learned that upon a request from A.G.T. in writing in 1963, one of the Alberta Registrars in Bankruptcy notified A.G.T. with respect to each assignment filed in bankruptcy, and each receiving order made in that Bankruptcy Division. I am satisfied this policy was not followed throughout Alberta, but at least one Bankruptcy Division had followed the practice for a number of years.

It was my view that the Alberta Government Telephones should not be provided with any such preferential treatment, as would seem to exist from the above policy. Any creditor of a bankrupt is, of course, entitled to contact the

68-260-1 (Continued)

Registrar in Bankruptcy in question. However, I felt that A.G.T. should not be entitled to any automatic service from Government Departments or Agencies, that was not provided to any other creditor of a bankrupt.

There is, of course, no doubt that A.G.T. has a somewhat unique position in the sense that at least the majority of persons going into bankruptcy in Alberta, own a telephone. Furthermore, the telephone company is not in a position to repossess, if the fair debts owing to that company become delinquent.

I was assured by the company, that the procedure in question would be amended, and that in future the A.G.T. will obtain such information in the same manner as that followed by any other creditor of a bankrupt estate.

I may say that I was extremely interested, and somewhat appalled at some of the problems which the Company faces in collecting delinquent accounts, as well as the manner in which the company is hard-put to defend itself against certain types of fraud. The direct-dialing telephone system, particularly where it is used for long distance services, can be used to run up extremely large telephone bills before the company realizes it is faced with a dead-beat. I can understand that the company must take some precautions to protect itself against this sort of deceit or fraud.

On the other hand, there must be a reasonable balance, in a computerized age, so that the honest subscriber, who maintains a good credit rating, does not reach the point where he is treated as a potential delinquent, merely to ensure that the dishonest are brought to task.

ALBERTA GOVERNMENT TELEPHONES

68-260-4

The complainant reported that he had been a customer of the Alberta Government Telephones since 1961 and that during that whole period he had paid his telephone bills regularly with no collection problems.

Shortly before the complaint, he stated that he had rented a basement suite in his house to two men who had no telephone of their own and therefore would use the complainant's telephone. He subsequently received a letter from the Business Office of the Alberta Government Telephones advising him that a recent investigation had ascertained that the two men in question were residing in the complainant's premises and had access to the complainant's telephone. The letter then went on to state that it would be necessary for the complainant to make a Service Deposit in the amount of $100.00 to be paid into the Office of Alberta Government Telephones by cash or certified cheque not later than 2:00 P.M., May 2nd, 1968. It was also stated in the letter that failure to make the deposit would leave the Company no alternative but to disconnect the complainant's telephone service without further notification. It is interesting to note that this letter did not give the complainant any reason why it was necessary to make a $100.00 deposit, other than the fact that two men whose names were mentioned, were residing upon the premises, and had access to the complainant's telephone service.

In his complaint to me, the complainant advised that he had checked the matter with the Alberta Government Telephones and was advised that the two men in question were indebted to Alberta Government Telephones for telephone service prior to becoming tenants of the complainant. The complainant further stated that he was advised by the Alberta Government Telephones that it is a Company policy to demand a deposit in such circumstances. He felt that such a policy was unfair, working a hardship upon him and his wife, and he requested that it be investigated.

The letter from the complainant was submitted together with a letter from his Solicitor outlining the problem in somewhat more detail. The Solicitor took the view that if the Alberta Government Telephones argued that the policy was created because they were afraid their debtors would run up accounts on the customer's telephone, the argument had no validity, because the customer is responsible for all charges on his telephone. If he wished to run the risk of having another run up his telephone bill, that was his business.

I was able to arrange for an interview with the General Manager of Alberta Government Telephones and Senior Officials of his Department. I was accompanied at this meeting by Mr. Alex Weir, the Solicitor to the Office of the Ombudsman.

We had a prolonged and very useful discussion with the Senior Officials of the Alberta Government Telephones, during which time I learned much about the problems faced by Telephone Companies in general, in endeavouring to collect delinquent accounts. There can be no question of repossession by the Company which has sold a service and not goods. The Company must therefore rely on civil suit or discontinuance of service, or both.

I could not however accept the view of the Department that they were justified in demanding a deposit of as much as $100.00 from a subscriber who was in no way delinquent himself, simply because he had residing on his premises persons, who owed previous debts to the Company for services which they had received before taking up residence with the subscriber in question.

68-260-4 (Continued)

Because of the complainant's previous good credit record and the view of his own Solicitor that he was responsible for all charges on his own telephone, the Company agreed in this case to waive the requirement for the $100.00 deposit so long as the customer's credit rating remained in good standing.

In so far as this complainant was concerned, his complaint was therefore rectified, but I was advised that the Alberta Government Telephones is not prepared to change their general policy in such cases. I am much impressed with the difficulties which Telephone Companies face in collecting delinquent accounts. It was also made quite clear to me the manner in which debtors to the Company can run up very large telephone bills, where they have access to a telephone and before the Company can do anything to prevent it. It is perhaps not generally understood that when a long distance telephone call passes through the systems of several Telephone Companies, it is the responsibility of the Company where the call originated to pay the tariffs to the other Companies along the route. If the originating Telephone Company is unable to collect from the person who placed the call, it can suffer a considerable financial loss.

On the other hand it must be realized that the Alberta Government Telephones is a monopoly in most parts of this Province, and if the customer dislikes the service, he is in no position to take his business elsewhere. Under such circumstances I can find no natural justice in a policy which obligates a customer in good standing to post bond for the possible future indebtedness of those who reside under his roof, and who are not his own dependents.

68-110-31

The complainant and two other men, who were employed on a Petroleum Development, proceeded to a nearby town in October, 1966. They had been paid and all three cashed their pay cheques.

One of them, later to become the victim of robbery, cashed cheques for two other men who remained at the work camp. This man was to bring the money to the two men at the camp when he returned.

The intended victim and the complainant in this case, as well as the third man did some drinking together at one or more bars, where they were eventually joined by a young woman.

The victim later testified that his two companions became too boisterous for his liking. He left them and started to walk to another cocktail lounge some distance away. It was night time and apparently the area in which he was walking was not well lighted.

The complainant and his friend, the third of the trio, followed their intended victim to a point where the complainant jumped on him and brought him to the ground. In the presence of his friend, who was now his accomplice, the complainant took his victim's wallet, which contained $482.00 in cash and a number of Money Orders approximating $300.00.

The complainant removed $80.00 from the wallet and threw the $80.00 back to his victim. Then he and his accomplice ran away with the wallet, and the balance of the money, namely $402.00.

They divided up the spoils as soon as they were out of sight, the equality of the division being somewhat clouded by their condition.

The robbed man came upon a member of the R.C.M.P. shortly after the robbery and reported that he had been robbed.

The complainant and his accomplice were arrested shortly afterwards, and the incriminating wallet was recovered by the Police.

Both the victim and young woman, previously referred to, were eventually witnesses against the two accused.

It was a very stupid robbery, for the man who was robbed knew both of his assailants and could identify them. Liquor was the major contributor to this clumsy crime.

When the complainant and his accomplice were arrested, they had in their combined possession a sum of money in cash, amounting to $582.83. This sum was seized by the Police and, quite properly turned into Court as an Exhibit.

The two were charged of robbing the victim of approximately $400.00. They were committed for trial, and tried before a Justice of the Supreme Court of Alberta. They were both found guilty and sentenced to separate terms of imprisonment in January, 1967. The complainant received a longer sentence than did his accomplice.

The complainant in this case, now having considerable time for reflection, realized that when the Police had seized all the money, which he and his accomplice had in their possession at the time of their arrest, there was included in the total sum, not only that which they had stolen, but some of their own money as well.

68-110-31 (Continued)

The complainant was understandably not quite sure of how much of his money was involved, but he felt that there was approximately $80.00 of his money, which should still be in the possession of the Court. My Investigator was later to establish the correct amount as $67.00, which he did from the transcript of evidence given at the trial.

During his term of imprisonment, the complainant made a number of efforts to obtain the return of his personal funds. He communicated with his former Solicitor, and communicated in writing twice with Divisional Headquarters of the Royal Canadian Mounted Police in Edmonton. He was twice advised by the R.C.M.P., that the money which had been turned into Court was distributed by the Clerk of the Supreme Court, in accordance with an Order of the presiding Judge. These statements later turned out to be not entirely accurate. The complainant also wrote to the office of the Clerk of the Court asking for an accounting. He received an accounting in writing, showing that the whole sum recovered by the Police, namely $582.83 had been paid out by the Court as restitution, although the complainant and his accomplice had been convicted of stealing only approximately $400.00. The exact amount was $402.00.

Receiving no satisfaction from his inquiries, the complainant, still a prisoner in a Provincial Gaol, brought his complaint to the attention of the Ombudsman in June, 1968, a year and a half after his trial. An Investigator from the Ombudsman's Office studied the Departmental file and transcripts of the evidence given at the Preliminary Hearing, as well as the Trial. He confirmed that the actual amount stolen was $402.00. The total sum recovered by the Police and turned into Court was $582.83, all of which had been later distributed in restitution by an Officer of the Court.

Therefore $180.83 more than had been stolen, was paid out in restitution. Lacking any other explanation, this money was the joint property of the two prisoners.

When the victim was robbed, he had in his possession $402.00 cash. This included the cash for the two pay cheques he had cashed for two other workmen previously mentioned. These amounts were respectively $137.00 and $232.77, making a total of $369.77.

These men, who had entered a just claim, were paid these amounts in restitution leaving the sum of $32.23 from the original $402.00 stolen.

This sum of $32.23 was all that rightly belonged to the victim of the robbery.

However, the Officer of the Court paid the victim all the balance of the $582.33, seized from the complainant and his accomplice, namely the sum of $213.06. This was $180.83 more than the victim was entitled to, and that sum of $180.83 was the joint property of the complainant and his accomplice.

Of this amount, the complainant was entitled to $67.00 which was his own money. The balance of $113.83 appears to belong to the accomplice, who has served his sentence and whose whereabouts are unknown.

Furthermore the officers of the Court were unable to find any record that an application for restitution had been made to the Trial Judge. It is presumed therefore, by the Court officer, that restitution was made without a Judge's Order. The error was therefore an administrative error, and within my jurisdiction to investigate.

68-110-31 (Continued)

I brought the results of my investigation to the attention of the Deputy Attorney General, suggesting an "Ex gratia" payment of $67.00 to the complainant, and that an effort be made to locate the accomplice and reimburse him as well.

The Deputy Attorney General took immediate action, with the result that a cheque in the amount of $67.00 was in the hands of the complainant a few days after his release from the Gaol. The cheque for the money belonging to the accomplice is available to him if he is located. The complaint is therefore "Rectified".

68-110-36

The complainant in this case was arrested by the Police on July 19, 1938 for the murder of his infant son and his niece age seven, as well as the attempted murder of his wife, his brother-in-law and his nephew, age ten.

The attacks on these people took place during the night of July 14th, 1938. His infant son was killed at the scene of the offence and his niece died on July 16th in Hospital. The other persons assaulted all recovered.

He was committed for trial and while awaiting trial in Fort Saskatchewan Provincial Gaol, he was transferred on September 30, 1938 to Ponoka Mental Hospital for observation under authority of Section 970 of the Criminal Code of Canada.

He was subsequently adjudged insane and unfit to stand trial and remained in the Mental Hospital at Ponoka under authority of the Order of the Lieutenant-Governor.

In late 1945, according to the Hospital records, Dr. R. R. MacLean, then Medical Superintendent of the Hospital, gave the opinion that the complainant was not then showing symptoms or signs of an active psychosis, and that he was fit for trial. The inquiries about his condition continued at the request of the Attorney General's Department and again on April 2nd, 1946 the same Medical Superintendent wrote to the then Deputy Attorney General as follows.

PONOKA, ALBERTA,
April 2, 1946.

Mr. H. J. Wilson,
Deputy Attorney General,
EDMONTON, Alberta.

Dear Mr. Wilson: *Rex. v. (complainant)*

In reply to your inquiry of March 13th, 1946 and that of November 29th, 1945, I respectfully beg to advise that a review of the information on hand regarding the mental condition of the above-mentioned, as well as a re-examination and re-interrogation *of the patient would seem to indicate that the patient was psychotic at and for some time prior to the commission of the offense,* with which the patient was charged, that is, murder.

At the present time, the patient would not appear to be psychotic, however, psychometric examinations would indicate that his intelligence is not above borderline in character.

Due consideration was given a report submitted by Dr. McAlister to your Department, which report was submitted after Dr. McAlister had examined the patient at the Fort Saskatchewan Gaol on September 9th, 13th and 22nd.

Yours very truly,

The report of Dr. McAlister referred to and the dates mentioned in the above letter were 1938.

Dr. McAlister stated, in effect, that he was convinced that the prisoner exhibited quite marked symptoms of mental abnormality, and was of the opinion that he was suffering from a psychosis possibly superimposed on a basis of mental

deficiency. He also mentioned that the patient tried hard to co-operate but very frequently said "I don't know" - - "I can't remember - - ". Dr. McAlister expressed the opinion that if possible, the accused should be admitted to a Mental Hospital for additional observation and examination.

Hospital reports during the complainant's period in the Mental Hospital after 1938, and which were submitted by various Doctors refer to his confusion, hallucinations, and the hearing of voices telling him to kill members of the staff. Throughout this entire period he created no difficulty. His behaviour was well reported upon, and by 1943 the Medical reports stated that he "appears clear mentally, shows no signs of either hallucinations or delusions. Quiet and co-operative." There was some suggestion he might elope from the Hospital. However, he never attempted an elopement.

By 1945 he was reported as being an excellent worker — quiet and co-operative — clean and tidy — fairly quick to learn.

As mentioned before, he was eventually in 1945, found to be non-psychotic and fit to stand trial on a charge of murder. He was returned to Fort Saskatchewan Gaol by Order of the Lieutenant-Governor dated June 6th, 1946.

He was tried for the murder of his niece by a jury before the late Mr. Justice G. B. O'Connor. The jury returned a verdict of Not Guilty by reason of Insanity on June 18th, 1946.

It is important, at this point, to pay attention to a letter of November 16th, 1945 from Mr. G. Patterson, Agent of the Attorney General, who was the Crown Prosecutor in the murder trial of the accused. The letter is addressed to the then Deputy Attorney General, and deals with the preparation for the forthcoming trial. It reads as follows.

"Dear Sir:

Re: Rex vs. (complainant)

This is to acknowledge receipt of your recent letter re the above.

I have dug up the old file and find that I am in possession of all the various reports together with the evidence on the preliminary. I have informed Mr. Macdonald, counsel for the complainant, that the complainant will be brought on for trial at the sittings at ———— in the month of February next. As already suggested by you the report of Dr. McAllister will no doubt determine the outcome. *If his report is such that a jury could hold that he was insane at the time of the offence that, of course, would end the matter and he would be allowed to go.* If the reports are otherwise then I will be prepared to proceed in the establishing of the offence in detail.

Yours truly,"

(ITALICS ARE MINE)

The jury in its verdict did exactly what the Crown Prosecutor suggested they might do, and found that the accused was insane at the time of the offence and not guilty. However, that did not end the matter, and he was not allowed to go, contrary to the statement made by the Agent of the Attorney General to the Deputy Attorney General.

68-110-36 (Continued)

Instead the complainant was committed to Fort Saskatchewan by Mr. Justice O'Connor to await the pleasure of the Lieutenant-Governor.

On the recommendation of the acting Attorney General, the Lieutenant-Governor ordered that the complainant be conveyed to the Provincial Mental Hospital, at Ponoka and there to be detained until discharged by law, or released under the provisions of the Criminal Code of Canada.

The complainant had been originally detained in that Mental Hospital by Order of the Lieutenant-Governor from the 29th day of September, 1938, until returned to Fort Saskatchewan to stand his trial on June 6th, 1946, a period of slightly less than eight years. With the issuance of the new Order of detention by the Lieutenant-Governor on the 28th day of June, 1946, he was thereafter to remain in detention at the Provincial Mental Hospital at Ponoka until unconditionally released, by Order of the Lieutenant-Governor on July 2nd, 1968: a further twenty-two years, making a total of just under thirty years as an inmate of a Provincial Mental Hospital.

It should be noted that a Stay of Proceedings was entered following the verdict of Not Guilty on the initial charge.

On February 5th, 1968, the complainant wrote me the following letter which was received in my office on February 6th, 1968.

Alberta Hospital,
Ponoka,
February 5th, 1968.

Mr. George B. McClellan,
Ombundsman,
Province of Alberta,
920 Centennial Building,
Edmonton, Alberta.

Dear Sir:

I have been a patient in this hospital since 1938. I was mentally ill at the time of admission and was facing a criminal charge. In 1946 I went to Court and received a verdict of 'not guilty by reason of insanity'.

I know that I had been mentally ill but for many years now I have felt well. I believe that my doctors here also feel this.

Last year a Commission was set up by the Attorney General's Department to look into my case. I was seen by an outside psychiatrist, Dr. A. D. MacPherson, who had been appointed by that Department. I understand he felt that it would be all right for me to be released from the hospital now, and that he reported this to the Commission. This was done in June of 1967.

I have not heard anything since then. I would appreciated knowing where I stand.

Respectfully yours,
Signed by Complainant.

At the time this complaint was received, except for a Secretary and Stenographer, I was all alone in my Office. I was carrying out all investigations

myself, which were at that time approximately 150. While I acknowledged the complainant's letter on February 9th, I was unable to commence the investigation until May 8th, 1968.

I obtained the relevant files from the Department of the Attorney General, and I obtained a complete copy of the Hospital file dealing with this case. Most of the period of this investigation involved a thorough study of these files. This study was followed by an interview with the Superintendent of the Hospital, with members of his staff; and with the complainant himself. Information was also requested and received from the Director of the Mental Health Division of the Department of Health.

I further undertook to have a study made of available statutory and case law dealing with the detention of mental patients. I particularly interested myself in the law or opinions expressed on review and appeal procedures for such persons. Among these were, of course, the Alberta Mental Health Act and the former Alberta Mental Diseases Act. I took cognizance of the Clement Commission Report, which will be familiar to the Members of the Legislature. I arranged that a particular study be given to the book published by Barry B. Swadron, LL.B., LL.M. of the Ontario Bar, "Detention of the Mentally Disordered", dated 1964. I would have liked to quote from this book, but it covers such a broad field that to quote from it, except at great length, is to run the risk of quoting out of meaningful context. I heartily recommend a study of this book to those interested in this serious and complicated problem.

It appeared to me that the question of whether or not the complainant would long remain in the Mental Hospital at the pleasure of the Lieutenant-Governor, was raised not long after his acquittal, when the then Deputy Attorney-General wrote to the Medical Superintendent of the Provincial Mental Hospital on June 24th, 1946 as follows:

EDMONTON, Alberta,
June 24, 1946.

Dear Sir:

Re: Rex v. (Complainant)

The above named was tried on a charge of murder and was found not guilty by reason of insanity.

You will recall that you advised that ———— was sane and competent to stand trial, but it would appear that the jury rendered the verdict they did because defence counsel in effect told them that ———— would be kept in an institution for the rest of his life.

———— is at present confined at Fort Saskatchewan awaiting the pleasure of the Lieutenant-Governor in Council, *and as you are aware he can only be removed from a gaol to an institution under section 970 of the Criminal Code if he is insane, mentally defective or mentally ill.*

I think there would be some repercussions in the district where ———— lived if he were turned loose, and I would ask you to kindly advise whether you think that ———— can be said to be mentally ill so that we may have him removed to a mental institution

I am sending a copy of this letter to Dr. McAlister, who gave evidence at the trial, and I would appreciate word from you as to what action should be taken regarding this man.

(ITALICS ARE MINE)

The Medical Superintendent replied by letter of June 25th, 1946 as follows:

June 25, 1946.

Deputy Attorney General,
EDMONTON, Alberta.

Dear Sir:

Re: Rex vs. (complainant)

In reply to your letter of June 24th, I beg to advise you that our diagnosis in the case of the above-mentioned was Schizophrenia - Catatonic type on a Mental Defective basis. Formal intelligence tests indicate that the patient is mentally deficient, being in the high grade group. Such being the case, it would seem advisable and in order to transfer the patient to this hospital under Section 970 on the basis of the fact that the patient is a mental defective. *If it be in order for your Department to instruct us that the patient should be permanently institutionalized, it would simplify matters as far as we are concerned.*

In cases of this nature there is always a tendency for them to come under consideration from time to time, with a view to effecting their discharge. However, since there is a possibility of recurrence of the active psychosis, it seems only fair that the public should be protected in case murderous tendencies should again accompany the attack. Actually, the patient in his present state might get along quite well out of an institution and there are always those in the employ of the institution and interested parties outside of the institution who might question our right to detain the patient under such circumstances. Because of this latter tendency, on the part of those who would not be held responsible should anything of an untoward nature arise, instructions from your Department to retain the patient, would support our contentions that he should be institutionalized.

Yours very truly,
Medical Superintendent."

(ITALICS ARE MINE)

Apparently the problem of Section 970 was overcome by the use of Section 969 upon which the Order of the Lieutenant-Governor was issued. On July 3rd, 1946, the Agent of the Attorney General, Mr. Patterson, wrote to the Superintendent of the Mental Hospital at Ponoka concerning a request he had had from a Solicitor who wished to interview the complainant on behalf of the complainant's wife. The letter reads as follows:

"Dear Sir:

Re: (Complainant)

Mr. (Solicitor) has asked me if he could interview the above party on behalf of the wife (—).

I informed him that as far as we were concerned (the complainant) is now mentally sane although held by the Province indefinitely."

(ITALICS ARE MINE)

The balance of the letter has to do with the future marriage relationship of the complainant and his wife.

It should be noted that this opinion was expressed by the Agent of the Attorney General.

With this letter in mind, I was much impressed with a letter from Dr. R. R. MacLean, Medical Superintendent at the Mental Hospital at Ponoka addressed to the then Deputy Attorney General and dated September 2nd, 1947.

"

Re: Rex v. (complainant)

In reply to your letter of August 20, while I agree that the potentialities of the situation are very serious, I also believe that the problem involved is one which should be possible of settlement by judicial authorities.

There was no doubt in our mind but that (complainant) was psychotic for years while here. During that period, it was not possible for us to measure his intelligence because a psychosis interferes with such tests. Upon recovery from his psychosis, Intelligence Tests indicated that he was a Border Line Defective. He will not recover from this condition. Intelligence is only one aspect of an individual's make-up. When the intelligence is impaired, one could say that the patient is not normal mentally, however, one could hardly say that the patient was mentally ill because the patient is in his usual state of mind, having been that way from birth. Being mentally defective, his reasoning powers and judgment could not be expected to be as good as those of people of normal intelligence; *yet as in the case of (complainant) the intellectual defect is not sufficient to prevent him from being in good contact with his environment and being capable of mixing with others and earning his own living.* Because he is capable of these latter pursuits, and because a mental hospital can do nothing for him to alter his intellectual status, *it is most difficult to justify ourselves in keeping him in an Institution whose primary objective is the treatment and cure of the sick; not the custodial care of people in what is for them their normal state of mind.*

This all leads to the question as to whether or not the Department of Justice should establish an Institution for the custodial care of individuals who have committed serious crimes and who are potentially likely to repeat them, thus relieving hospitals of such responsibilities.

I rather feel I may not have clarified this situation to the extent that you may feel justified in instructing us not to retain — (complainant) in custody. However, the views expressed are in accordance with my studied opinions in this case.

Yours truly,"

(ITALICS ARE MINE)

This letter assumes particular importance in that the Superintendent of the Hospital did not feel that the complainant should continue to be detained even though he was a mental defective. As will be noticed later in this summary,

further psychological tests in 1964 and 1967 gave him, in the first instance, an I.Q. of 101 with a possible capacity of 110 to 115. A later test gave him an I.Q. of 107 with a higher potential. It was stated that his intellectual level is bright average. Another report in the same month stated that he is well within the normal range of intelligence, and in fact in one aspect of the test, he earned superior marks.

The medical files clearly indicate that at no time from the date he was found sane and fit to stand trial in 1946, was he ever again declared to be psychotic (insane).

Both the Attorney General's Departmental correspondence and the medical files reveal that the only remaining factor, upon which any weight can be placed to deny him a review, were allegations that he was a mental defective.

At the time he was first examined psychologically when he was admitted in 1938 and was psychotic, he exhibited an I.Q. of 70. From there he progressed to high grade mental defective, and eventually when additional psychological tests were taken in 1964, to a normally intelligent human being, and from thence to 1967, when he exhibited superiority in one certain category.

Additionally, at no time since his re-admission in 1946, eight years after the sad events which led to his arrest took place, has he ever created any trouble or indicated the slightest signs of temper or violence in the Hospital. The reports from many Doctors describe him as an excellent patient; neat and tidy; co-operative.

He ran a truck garden at the Hospital and sold vegetables to the Hospital. He worked in the tailor shop and became proficient in certain lines of tailoring. When I undertook his case, he was managing the Hospital canteen successfully. He had been allowed walking-out privileges to attend stampedes, moving pictures, and other events in Ponoka.

My investigation had made me aware that other persons found Not Guilty of murder by reason of Insanity had been detained at the pleasure of the Lieutenant-Governor. A number of these had been released upon recommendations of the Lieutenant-Governor, after much shorter periods in the Mental Hospital, than had been endured by the complainant.

During my investigation I also endeavoured to ascertain what steps may have been taken to obtain this complainant some review and a possible recommendation to the Lieutenant-Governor, considering his status as a non-psychotic human being of normal intelligence. The question of his mental condition at the time of the deaths of his relatives had been decided by the jury.

I found that at least two legal firms, one acting for his mother, had made representations to the Department of the Attorney General on his behalf. These had been rejected at the administrative level.

On July 14th, 1948, the Superintendent of the Mental Hospital at Ponoka forwarded to the then Deputy Attorney General a letter signed by the complainant and addressed to the Lieutenant-Governor of Alberta. That letter reads as follows:

Provincial Mental Hospital,
PONOKA, Alberta.

The Hon. J. C. Bowen,
Lieutenant Governor of Alberta,
EDMONTON, Alberta.

Sir:

I take this liberty of addressing myself to you to give you certain facts and to make a request.

In August 1938, in ———— Police Court I was charged with murder and remanded to Fort Saskatchewan Jail to await trial before a higher court. I was brought from the jail to this hospital, for observation, and found to be insane.

During the next eight years I was given treatment for a mental disease. In 1946 Dr. R. R. MacLean certified me recovered and recommended that I stand trial.

On June 18th, 1946 I faced Mr. Justice O'Connor charged with murder and was found not guilty on account of insanity. He ordered me detained in custody during the pleasure of the Lieutenant Governor.

My position is anomalous, a jury, on the advice and direction of one of His Majesty's learned judges found me Not Guilty. Some of the leading psychiatrists in the Dominion certify that I am sane. Must I then, spend the remainder of my natural life — maybe another forty years — under lock and key, when there is every indication that I could lead a normal and useful life?

I am detained during your pleasure, and I beg that you will extend your clemency; please consider well, the position of a sane man spending the rest of his life among insane people, and grant me that which is more valued than life itself — freedom.

I will give a solemn undertaking never to attempt to see or communicate with my wife or her family. I will leave the Province and go to Ontario where my aged mother awaits me with a home already prepared.

Please give my unhappy position your kindest consideration.

Obediently yours,
Signed by Complainant.

I inquired as to what action had been taken concerning this letter, and I found that it had been retained on the files of the Attorney General's Department, and at no time had it ever been brought to the attention of the Lieutenant-Governor of the day or any of his three successors.

There appears to be some confusion as to the exact meaning of the words "detained at the pleasure of the Lieutenant-Governor". The files in this case indicate that the trial Judge himself was not too clear on the subject. Mr. Macdonald, who defended the complainant at his trial, had apparently advised the jury that if they found the complainant Not Guilty by reason of Insanity, he would be held in custody for the rest of his life. However, the Trial Judge in

charging the jury informed them that the pleasure of the Lieutenant-Governor did not mean what Mr. Macdonald stated. *In fact he said he himself did not know what it meant.*

However, the words themselves convey to me a continuing situation, which may be terminated by the Lieutenant-Governor at his pleasure, as he has done on a number of other occasions.

Detained the complainant may have been, but I can find no authority in the Criminal Code or in the Order of the Lieutenant-Governor for his detention, that authorizes any Civil Servant, regardless of his seniority, to intercept and hold back the complainant's mail addressed to the Lieutenant-Governor of his Province. This man was not a convicted criminal.

It is perhaps fortunate for the complainant, that the Legislators by their enactment of the Ombudsman Act, ensured that mail from patients in Mental Hospitals and prisoners in Provincial Gaols, addressed to the Ombudsman, must be forwarded to him unopened.

The situation as I view it seemed to be this. This man could not be released, according to the legal views held in the Attorney General's Department, except by the Lieutenant-Governor. The officials of that Department were quite obviously, as indicated in the Departmental file, not prepared to take any submission to the Lieutenant-Governor in connection with this man's case. Finally, they were not prepared to let his own appeal addressed to the Lieutenant-Governor, reach the Lieutenant-Governor. At the time that the complainant wrote his letter of appeal to the Lieutenant-Governor, there was, as I see it, no manner in which the complainant could get his views before the Lieutenant-Governor, and therefore no opportunity for the Lieutenant-Governor to reconsider the Order for Detention.

Looking at the possibility of some other authority exercising the discretion in such a case, I directed my attention to the remarks of Mr. Justice J. V. H. Milvain, now the Chief Justice of the Trial Division of the Supreme Court of Alberta. He was presiding at the hearing of an application for a Writ of Habeas Corpus on behalf of another person detained by Order of the Lieutenant-Governor. This was a case in which an applicant charged with murder had been found Not Guilty by reason of Insanity and detained at the Lieutenant-Governor's pleasure.

> His Lordship said, in 1961,
> "It seems therefore to me that unless and until the Lieutenant-Governor has done something in the way of exercising his discretionary powers, I cannot substitute my discretion for his."

The question arises in my mind, that if the learned Justice felt that he, in his capacity, could not substitute his discretion for that of the Lieutenant-Governor; who then, may exercise the discretion which is properly that of the Lieutenant-Governor.

Eventually in June, 1967, a decision was taken by the Department of the Attorney General to constitute a Committee to make recommendations to the Lieutenant-Governor, on the release or otherwise of the complainant. Such Committees were established on an "Ad hoc" basis as a result of Departmental policy. They are not provided for by statute. The decision to assemble such a Committee is an administrative discretion taken by the Department.

Following the commencement of my investigation on the 8th of May, 1968, I found that the Committee, decided upon in June, 1967, had not yet been convened. When I made my representation to the Deputy Attorney General on June 28th, 1968, the Committee had not yet been convened. The period of time from the decision to form such a Committee was approximately one year. The Departmental files reveal that during the first ten months of that year, the Department had approached three different Justices of the Supreme Court to act as Chairman, all of whom had been agreeable to do so, yet no Committee meeting had been held during that ten month period.

Just about this time the complainant was admitted to a Medical Hospital for major cancer surgery. Understandably he could not be present at a hearing during this period which was approximately two months. He was back in the Mental Hospital by early June.

The situation was therefore, that the complainant since he was found not guilty, had been detained by an Order of the Lieutenant-Governor in a Mental Hospital for approximately twenty-one years before a decision was arrived at to hold a Committee to recommend to the Lieutenant-Governor for or against his continued detention. A further year had elapsed since that decision was taken and no meeting of the Committee had been held.

I made an inquiry to ascertain the manner in which other cases of persons found Not Guilty of murder by reason of Insanity had been dealt with. It is important to remember that the complainant had been almost eight years in the Hospital under observation before he was found fit to stand his trial. At no time since his trial had he been declared psychotic. The psychological examination in 1964 disclosed that he was not a mental defective but of normal intelligence. That finding was confirmed by a further psychological test in 1967.

In examining other cases, I of course found a number of persons who had been detained by Order of the Lieutenant-Governor and who are still psychotic and still detained, probably for the rest of their lives.

I found some other cases however, where either by Order in Council, or following the recommendation to the Lieutenant-Governor, by a Committee of the type referred to, they had been released.

In the case in which Mr. Justice Milvain expressed the opinion I have referred to, this person had been found not Guilty of murder by reason of Insanity, and was admitted to the Mental Hospital at Ponoka by Order of the Lieutenant-Governor in May of 1961. The Habeas Corpus application was heard in October of 1961 and was dismissed. A Committee hearing followed subsequently and this particular person was released by Order of the Lieutenant-Governor in April of 1962. The total time of detention by the Lieutenant-Governor's Warrant was less than one year.

In another case, again with the same verdict for the same charge, this particular person was released by Order of the Lieutenant-Governor in a year and a few days.

It might be added that since the release of the present complainant, there have been two other releases. In the first one, three persons were killed, all of the same family of which the accused was a member. Following the verdict, the former accused was admitted to the Mental Hospital on the Lieutenant-Governor's Order in July of 1963. There was a conditional release in August of 1968 requiring certain conditions and treatment, surveillance and rehabilitation.

68-110-36 (Continued)

The period of full detention in this case was five years and one month. In the second case, the accused was tried for the murder of her husband and found Not Guilty by reason of Insanity. Following the trial which commenced in June, 1968, this woman was detained at the Mental Hospital by Order of the Lieutenant-Governor. Following a hearing before a Committee, she was conditionally released by Order of the Lieutenant-Governor in October of 1968, a period of approximately four months. These conditions involved her returning to her native land and receiving psychiatric advice.

From all the facts and information which I gathered about the complainant, and others in the same position, one glaring wrong was evident. There is no law so far as I can find, which makes mandatory, a review at regular intervals, by any independent Commission or tribunal, of the continued detention in Mental Hospitals of persons who have been found not guilty of a crime by reason of insanity. Furthermore, the type of Review Committee, which has been set up as a matter of Departmental policy, due to the silence of the law in this regard, has no requirement for regularity. It has no requirement that it be applied to all such persons. It is usually applied only to those persons who are regarded as potentially likely to be released. As this case exemplifies, the time which shall elapse between the decision to call together a review Committee, and the date upon which it actually is called, is a matter of Departmental administrative discretion.

In applying the provisions of Section 20 of the Ombudsman Act to all these circumstances, I noted that the Legislature has provided that the Ombudsman may come to a number of opinions concerning the subject matter of the investigation. Two of these are,

> "that the decision, recommendation, act or omission that was the subject matter of the investigation
>
> (a) appears to have been contrary to law, or
>
> (d) was wrong."

I particularly noted that these two provisions are provided as alternatives. I can arrive at no other opinion than, that the administrative procedures carried out in dealing with the case of this complainant were wrong within the meaning of the Ombudsman Act.

Accordingly, I arranged for an interview with the Deputy Attorney General which was held on the morning of June 28, 1968, which coincidentally was the 22nd anniversary of the date upon which the complainant had been detained by Order of the Lieutenant-Governor in 1946. I was accompanied by the Solicitor to the Ombudsman's Office, Mr. A. B. Weir. I recounted to the Deputy Attorney General the history of my investigation, and presented to him the opinions at which I had arrived. I recommended the unconditional release of the complainant at the earliest possible moment as my main submission.

The Deputy Attorney General agreed to so recommend to the Attorney General of the Province the following day.

The Deputy Attorney General requested me to submit to him a memorandum outlining my understanding of this interview, the subjects discussed and agreement arrived at. I prepared this memorandum immediately upon my return to the Office that day. I forwarded it together with a covering letter dated July 2nd. It should be noted that the meeting was held on Friday, June 28th. Saturday and Sunday were not Office days and Monday was July 1st, a legal holiday.

68-110-36 (Continued)

Before 9:30 A.M. on July 2nd, the Deputy Attorney General advised me by telephone that the Lieutenant-Governor had signed an Order, on the approval of the Attorney General, authorizing the unconditional release of the complainant.

The Lieutenant-Governor's Order was as follows:

To: The Medical Superintendent of
the Alberta Hospital at Ponoka.

CANADA)
PROVINCE OF ALBERTA)
APPROVED:
EDGAR H. GERHART,
ATTORNEY GENERAL.

WHEREAS by section 523 of the Criminal Code it is provided that:

"523. (1) Where, upon the trial of an accused who is charged with an indictable offence, evidence is given that the accused is acquitted,

(a) the jury, or

(b) the judge or magistrate, where there is no jury, shall find whether the accused was insane at the time the offence was committed and shall declare whether he is acquitted on account of insanity.

(2) Where the accused is found to have been insane at the time the offence was committed, the court, judge or magistrate before whom the trial is held shall order that he be kept in strict custody in the place and in the manner that the court, judge or magistrate directs, until the pleasure of the Lieutenant Governor of the province is known.

WHEREAS by section 526 of the Criminal Code it is further provided that, "Where an accused is, pursuant to this Part, found to be insane, the Lieutenant Governor of the province may make an order for the safe custody of the accused in the place and in the manner that he may direct.";

JOHN E. HART,
D. A. G.

AND WHEREAS on the 18th day of June, A.D. 1946, one ————————, having been tried at ————————, Alberta, by the Honourable Mr. Justice G. B. O'Conner and Jury on a charge of murder, contrary to section 263 of the Criminal Code of Canada and having been found not guilty on account of insanity by the Jury was ordered by the Court to be placed in strict custody in the Provincial Gaol at Fort Saskatchewan, and there kept pending the pleasure of the Lieutenant Governor;

AND WHEREAS in pursuance of the Order of the Court, the said ————————, on the 18th day of June, A.D., 1946, was conveyed to the Provincial Gaol at Fort Saskatchewan.

68-110-36 (Continued)

AND WHEREAS by our Warrant dated the 28th day of June, A.D. 1946, the said ———————— was removed to the Provincial Mental Hospital (now known as the Alberta Hospital), Ponoka, for observation and treatment;

AND WHEREAS a report has been received from Dr. J. M. Byers, Medical Superintendent of the said Alberta Hospital that the said ———————— is no longer considered to be mentally deficient and could be discharged from the Hospital;

THEREFORE, I, J. W. GRANT MacEWAN, Lieutenant Governor of the Province of Alberta, am satisfied that the said ———————— has recovered and should be released from further custody in the Alberta Hospital, Ponoka, and I do hereby authorize you and require you the Medical Superintendent of the Alberta Hospital at Ponoka to discharge the said ———————— forthwith.

GIVEN under my hand and seal at Edmonton, in the Province of Alberta, this 2nd day of July, in the year of Our Lord, One Thousand, Nine Hundred and Sixty-eight.

(Signed) GRANT MacEWAN
Lieutenant Governor of the
Province of Alberta

The Lieutenant-Governor's Order dated the 2nd of July, 1968, refers to the report received from Dr. J. M. Byers, Medical Superintendent of the Alberta Hospital at Ponoka which stated that the complainant was no longer considered to be mentally deficient and could be discharged from the Hospital.

That report upon which His Honour acted, dated June 1st, 1967, is included hereunder.

"Mr. Samuel A. Friedman,
Assistant Deputy Attorney General,
Department of The Attorney General,
Legislative Building,
Edmonton, Alberta.

Dear Mr. Friedman:

Re: Mr. (complainant)
Your file No. Mi/9628.

I have for acknowledgement your letter of May 24th, 1967 regarding the above noted.

It is quite true that Mr. (complainant) was considered mentally deficient when first examined, and tests administered to him shortly after his admission did indicate that he did have a low order of intelligence. However, in the many years that I have known him, he has not behaved in the manner of a Mental Defective, and furthermore, yesterday I had our Psychologist examine him, and the report is that he is well within the normal range of intelligence, and in fact in one aspect of the test, he earned superior marks. In all

likelihood, during Mr. (complainant's) acute psychotic state on admission, and for some time afterwards, he did behave and react as a Defective. This is no longer so.

Yours very truly,

J. M. Byers, M.D.,
Medical Superintendent."

I include hereunder my letter of June 28th and my covering memo of July 2nd, to the Deputy-Attorney General, as requested by him.

920 Centennial Building
Tel. 422-5755
June 28, 1968
Our File: 68-130-6

Mr. J. E. Hart, Q.C.
Deputy Attorney General
Legislative Building
Edmonton, Alberta

Dear Mr. Hart:

Re: ————————, Ponoka, Alberta

Detention of Lieutenant Governor's Order

In accordance with the request made by you at the conclusion of our meeting on Friday, June 28th, I am submitting herewith a summary in part of the submissions I made to you which you accepted and agreed to have presented to the Lieutenant Governor on Tuesday, July 2nd, 1968 together with an Order prepared for his signature. The Order was to provide for the unconditional release from detention of ————————, now detained in the Alberta Hospital at Ponoka on the authority of an order issued by the late Lieutenant Governor, The Honorable J. C. Bowen, dated June 28th, 1946.

You will remember that part of the penultimate paragraph of that Order said "and I do hereby authorize you, the Superintendent of the said Hospital, to receive the said ———————— into your custody in the said Hospital there to detain him until the said ———————— is *discharged by law* or *released under the provisions of the Criminal Code of Canada.*"

It was my submission that the Lieutenant Governor had provided two alternatives for the release of ———————— which would be acceptable to him. First that he could be released under the provisions of the Criminal Code and or alternatively discharged by law. My submission was that the only law other than the Criminal Code was contained in the Alberta Mental Diseases Act and its successor, the Alberta Mental Health Act.

We discussed my submission and I understood your view to be that in any event an interpretation of the Lieutenant Governor's meaning could only be decided by a Court of law.

As you are aware, I am deeply concerned that———————— obtain his freedom without the slightest delay. He has been detained at Ponoka for just under thirty years. Twenty-two years ago today The Honorable Lieutenant Governor's Order referred to above was signed. From that entire period to date the Medical Reports of the Superintendent and Psychiatrists at Ponoka have declared him to be not psychotic (not insane) and the wording of Section 969 of the former Criminal Code under which Section he was detained refers only to insanity.

In April of this year, 1968, ———————— was admitted to the University Hospital, Edmonton, where he underwent surgery for the removal of a malignant growth from his side and a kidney. He has been returned to the Alberta Hospital at Ponoka where he now resides. At this stage, the prognosis is of course indefinite.

For the reasons mentioned above, I naturally felt I could not wait for any judicial decision and I made my parallel submission dealing with another phase of the results of my investigation.

During the years a number of letters and reports have been submitted to the Attorney General's Department from the Superintendent or other Medical Officers at Ponoka. For the sake of brevity, I will only quote from these. These quotations may be read in context with the originals or photo copies which are on your files or mine.

September 24/45. Letter from Medical Superintendent to Mr. Gray of Attorney General's Department stating: "for some time passed now this patient has been showing no symptoms or signs of active psychosis (insanity)".

November 16/45. Letter from Agent of Attorney General Mr. Patterson to Deputy Attorney General stating: "If his report is such that a jury could hold that he was insane at the time of the offense that of course would end the matter and he would be allowed to go."

April 2/46. Letter from Medical Superintendent MacLean to Deputy Attorney General stating:
"I respectfully beg to advise that a review of the information on hand regarding the mental condition of the above mentioned, as well as the re-examination and re-interrogation of the patient would seem to indicate that the patient was psychotic at and for some time prior to the commission of the offense, with which the patient was charged, that is, murder. At the present time the patient would not appear to be psychotic . . .".

June 16/47. Letter from Medical Superintendent MacLean to Deputy Attorney General stating in part:
"He has since recovered from his psychosis and is now, in our opinion, not psychotic. Not with-

standing this, it has been established that he has a high grade mental defective, although we do not feel that he should be confined on that score, as he is quite capable of earning his own living."

Sept. 2/47. Letter from Medical Superintendent MacLean to Deputy Attorney General stating in part:
"It is most difficult to justify ourselves in keeping him in an Institution whose primary object is the treatment and cure of the sick; not the custodial care of people in what is for them their normal state of mind.

Mar. 4/49. Letter from Medical Superintendent Mickie to Deputy Attorney General.
"———— is not psychotic at the present but is mentally deficient".

Apr. 27/67. Letter from Medical Superintendent Byers to Deputy Attorney General:
"He has not shown evidence of psychosis at least not since the early 1940's and his behavior has been exemplary over the many years that he has been here. In view of the fact that this man has been confined to a Hospital for almost twenty-nine years and he has not shown signs of psychosis for many years I am wondering if anything can be done in consideration of his case with the view of regaining his "freedom".

Undated. Letter from ———————— addressed to Lieutenant Governor. This letter was forwarded by covering letter from Medical Superintendent Mickie to the Deputy Attorney General dated July 14, 1948. This letter was not forwarded from the Attorney General's Department to the Lieutenant Governor and remains on the files of the Attorney General's Department. ———— letter says in part "I am detained during your pleasure and I beg that you extend your clemency: Please consider well the decision of a sane man spending the rest of his life among insane people and grant me that which is more valuable than life itself — 'freedom' ".

There have been references to ———— being a high grade Mental Defective. I would point out that he was not confined on those grounds and I have Dr. Byers' statement that he would not normally be detained at the Mental Hospital as a Mental Defective.

However, Dr. A. D. MacPherson, M.D., a Psychiatric Consultant submitted a full report to the Assistant Deputy Attorney General on June 17, 1967 and this is what Dr. MacPherson has to say concerning the question of ———— being a Mental Defective.

"Psychometric tests done in 1938 placed his I.Q. in the moron group. He obviously is not defective. Clinically he appears to be quite bright and a psycchometric test done about three years ago gave him an I.Q. of 101 with a possible capacity of 110-115. Dr. Byers has had a repeat done on the 30th of May 1967. His I.Q. was 107 with a higher potential so that *his intellectual level is bright average.*"

In my submission to you I pointed out that at no time since The Honorable J. J. Bowen signed the Order of Detention on the 28th of June, 1946 has the Department of the Attorney General submitted any further information to the Lieutenant Governor of whom there have been several. None of the above mentioned medical reports were referred to the Lieutenant Governor. ————'s letter of appeal directed to the Lieutenant Governor was not delivered to the Lieutenant Governor. No recommendation has been made by the Attorney General's Department to the Lieutenant Governor.

The Lieutenant Governor therefore, I submitted, had been given no opportunity to withdraw or replace the original Order as he of course has every right to do.

I now merely mention my third parallel submitted that the new Mental Health Act of 1964 provided under Section 9 for the admittance of persons on a Lieutenant Governor's Order and I believe the Legislators in making this provision brought such a detained person within the provisions of the Mental Health Act and therefore ———— could and should have been released by the Superintendent of the Hospital by virtue of Section 22 (1). "A patient detained in Hospital pursuant to this Act shall be discharged from the Hospital when in the opinion of the Superintendent he has sufficiently recovered or it is in the interest of the patient that he be discharged." You did not agree with this view and we did not resolve our different views. We did not pursue the matter in view of your acceptance of what I considered to be the most speedy solution.

A decision was taken in 1967 in the Department of the Attorney General to select a commission to make recommendations to the Lieutenant Governor as to the release or otherwise of ————. The Assistant Deputy Attorney General asked the Honorable Mr. Justice Colin McLaurin to sit as Chairman of such a Committee by letter on June 1967. No Committee has to this date been convened to consider this matter although the file reveals for reasons unknown to me that Mr. Justice Peter Greschuk and later Mr. Justice O'Byrne were later approached successively to sit as Chairman of such a Committee.

It is agreed that during the year which has elapsed since the approach to Mr. Justice McLaurin, ———— has spent two months in 1968 undergoing surgery and would not have been available. There were ten other months still available since the decision was taken.

Your suggestion to me this morning was that the Committee be called to sit next week. In view of the time which has elapsed

I submitted as urgently as possible that such a Committee was not authorized by any law and therefore not an essential requirement. I urged instead that the Attorney General make an immediate submission and present an Order to the Honorable, The Lieutenant Governor praying his favorable approval of the immediate release of ————————. You agreed to request the Attorney General to make such a submission or in his absence to do it yourself as early as possible on Tuesday, July 2nd. You also requested me to prepare a resume of my submissions and our discussions which I now forward herein.

I would be grateful if you could advise me by telephone at the earliest possible moment of the decision taken by his Honor.

Yours very truly,

Geo. B. McClellan
Ombudsman
Province of Alberta

Geo. B. McClellan,
Ombudsman,
920 Centennial Bldg.

July 2, 1968.

Mr. John Hart, Q.C.,
Deputy Attorney General,
Legislative Building.

Re: ————————

Attached hereto please find the submission which I agreed on Friday last, to forward this morning for the information of the Lieutenant-Governor in arriving at a decision.

In addition, you will remember that you had agreed to "Withdraw" the outstanding charges against ———— on which prosecution was stayed.

Geo. B. McClellan,
Ombudsman.

My file reveals that on July 29th, 1968, I placed a footnote on my file copy of my memorandum of July 2nd, 1968 referred to and embodied above.

That footnote which was in my own handwriting and initialled by me, reads as follows:

"NOTE: No reply having been received to the submission referred to above by this date — July 29/68, it must be assumed the A. G.'s Dept. does not propose to argue the points made.

GBMc "

The complainant remained in the Hospital as a voluntary patient for a few days until he could make plans for his future. He then left the Hospital on July 23rd. He was obligated very shortly after, to seek single welfare assistance of $90.00 per month.

68-110-36 (Continued)

I have kept in touch with him and I have learned much of the problems of facing the world and society of today, after thirty years in an Institution. His health was obviously of some concern as well.

In September of 1968, during my absence from the Province, Mr. Weir, with my authority, held two meetings with the Honourable the Attorney General concerning the possibility of financial assistance for the complainant. In view of his health and the only references he could bring forward in seeking employment at the age of 59, I considered him to be unemployable.

The Honourable the Attorney General was most receptive and sympathetic to the plight of the complainant.

In early October of 1968, I recommended to the Honourable the Attorney General that a temporary monthly allowance of $200.00 be granted to the complainant until such time as I could conduct a survey of his permanent needs and consult with those who could give me professional advice on costs of living, rents, etc. The temporary allowance of $200.00 per month was approved by Order in Council.

On October 17th, 1968, I submitted in writing to the Honourable the Attorney General my firm recommendation for a monthly pension and such other funds as I considered necessary, from the advice I had received, to sustain the complainant in modest comfort for the rest of his life.

In December of 1968, an Order in Council was approved authorizing a monthly pension for the complainant in the amount of $385.00. It was also authorized that the sum of $1,575.00 be paid to the Public Trustee for the use of the complainant in equipping himself with household furnishings, clothing, eyeglasses and other personal effects. It was further authorized that the Provincial Treasurer pay to the Public Trustee the sum of $500.00 to be held by the Public Trustee in trust as an emergency fund for the complainant. This latter fund, if substantially depleted, is to be replenished from public funds. I was gratified that the amount of the monthly pension and the amount of the cash grant were in the identical amounts I had recommended. I did not recommend any particular sum for the emergency fund, and I consider the amount approved completely adequate.

To sum up at this point, immediate action had been taken to obtain the release of the complainant following my recommendation to the Deputy Attorney General. My subsequent recommendation for a temporary allowance had been accepted and approved. My final firm recommendations for funds to sustain the complainant had been accepted in their entirety, and approved by Order in Council. The complaint was therefore completely rectified.

When I made a full review of my file in this matter and particularly my written submission to the Deputy Attorney General of June 28, I took into account the provisions of Section 16 (3) of the Ombudsman Act which reads as follows:

> (3) It is not necessary for the Ombudsman to hold any hearing and no person is entitled as of right to be heard by the Ombudsman, but, if at any time during the course of an investigation it appears to the Ombudsman that there may be sufficient grounds for his making a report or recommendation that may adversely affect any department, agency or person, he shall give to that department, agency or person an opportunity to be heard, and the department, agency or person is entitled to counsel at the hearing.

68-110-36 (Continued)

It was my intention to publish in my Annual Report, the submission to the Deputy Attorney General referred to. I could not be sure of the reaction with which it might be received, and I felt it incumbent upon me to bring the contents of the subsection noted above to the attention of the Deputy Attorney General, and any other members of the Attorney General's Department who might be concerned.

I then wrote a personal and confidential letter of November 27th to the Deputy Attorney General. It was marked personal and confidential, only so that it should be received directly by him, and not opened at some subordinate level. As I have received a written opinion from the Department of the Attorney General approved by the Deputy Attorney General and which I shall embody in this report, I therefore record hereunder my letter referred to above.

November 27, 1968.

PERSONAL AND CONFIDENTIAL
Mr. John E. Hart, Q.C.,
Deputy Attorney General,
Legislative Building,
EDMONTON, Alberta.

Dear Mr. Hart:

Re: ————————

Detention on
Lieutenant-Governor's Order.

1. The above-mentioned case must understandably be included in my Annual Report to the Legislature for 1968, and which I anticipate will be tabled during the next sitting of the Legislature. The report will generally follow the lines of my letter to you of June 28, 1968, which I wrote at your request following our meeting earlier on the same day.

2. It follows therefore, that the report will be critical of the detention of ———————— for so many years following the not guilty verdict at his trial for murder, and of the period of time which elapsed after the decision was taken to set up a special Board to recommend his release or otherwise to the Lieutenant-Governor.

3. Under the circumstances, I feel I should bring to your attention Section 16(3) of The Ombudsman Act, and in particular the latter part of that subsection.

4. I would be grateful if you would bring the contents of this letter to the attention of any members of your staff whom you feel may be affected, so that they may be aware of the opportunity to be heard, as provided for in the subsection mentioned.

Yours very truly,

Geo. B. McClellan,
Ombudsman.

68-110-36 (Continued)

Some time later, the Deputy Attorney General advised me that I would be receiving a communication in answer to my letter.

On January 9th, 1969, I received an Opinion from the Department of the Attorney General, prepared by a Solicitor of that Department and approved by the Deputy Attorney General himself. The date of receipt was of course after the close of my calendar work year, but for the same reasons as mentioned above I am, for these purposes, disregarding the fact that it was received in January of 1969. I therefore consider it essential in the interests of all concerned, that the Opinion which I received be included in this report.

The Opinion is dated December 6th, 1968. I embody it hereunder in its entirety except for the deletion of the name of the complainant and the names of the members of his family who were involved.

OPINION OF THE DEPT. OF THE ATTORNEY GENERAL

In his letter of November 27th the Ombudsman advises of the right to a hearing of any members of the staff of this Department who might be affected by his proposed report to the Legislature. In the said letter he advises that the report will be critical of the detention of the complainant for so many years following the "Not Guilty" verdict at his trial for murder, and of the period of time which elapsed after the decision was taken to set up a special Board to recommend his release or otherwise to the Lieutenant-Governor. At your request I have gathered together from the file facts and authorities which vindicate the position taken by the Department in this matter. For convenience I will deal with the Ombudsman's criticisms under two headings:

A. The detention of the complainant at the Alberta Hospital, Ponoka for so many years following the "Not Guilty" verdict at his trial. Under this heading it is proposed to deal with the period from 1945 until 1967.

In his letter of June 28, 1968, the Ombudsman sets out in great detail various letters written over the years by the Superintendent and other Medical Officers at Ponoka, which, taken in the aggregate, indicate that since the early 1940's the complainant ceased to be psychotic. This of course he uses in his argument that the complainant was, since his trial, wrongfully detained. *With respect it is submitted that the Ombudsman has failed to sufficiently appreciate the real reasons for the complainant's detention after the trial.* Before dealing with these reasons it is proposed to set out the law dealing with persons acquitted of an offence by reason of insanity.

There is a great difference between the position of a sane person who is acquitted of an offence and the position of a person who is acquitted of an offence by reason of insanity. The former of course goes free since upon his acquittal the criminal process ends. Such is not the case with the latter. This position is made clear in B. B. Swadron's Detention of the Mentally Disordered where at p.p. 376 - 377 the learned author observes:

> "The detention of a person acquitted on account of insanity is authorized by the Criminal Code, a Dominion Statute. The Dominion Parliament, by virtue of the British North America Act, 1867, has exclusive authority to legislate on the criminal law and the procedure in criminal matters.
>
> The question arises as to when the criminal process ends. It is clear that the criminal process terminates upon a verdict of acquittal. Does the same hold true in respect of an acquittal on account of insanity? If it does, then in the absence of any other legislative authority given to the Dominion Government by the constitution being of application, such detention would be illegal.
>
> The point was considered in the case of R. v. Trapnell, a decision in 1910 of the Ontario Court of Appeal. The following appears in the judgment of the Court:

> "It is essential to ascertain, in the first place, the character of the custody in which the men who escaped were held. They were confined in that which is called the criminal house of the Provincial Asylum at Hamilton, upon an order of the Lieutenant-Governor of the Province, made under sec. 969 of the Criminal Code; so that their custody must have been as criminals; otherwise the enactment would be ultra vires; civil rights, and the establishment, maintenance, and management of asylums, are exclusively provincial matters."
>
> "But it is said that these men had been acquitted, and how, then, could they be detained except as lunatics simply? *It is true that they were, in a sense, acquitted by the juries by which they were tried;* but *the acquittal was a part only of the verdicts; they were special* verdicts under sec. 966 of the Criminal Code, *the full import of which was that each had committed the crime with which he was charged, but was insane at the time,* and on that ground only was acquitted. If they had been found not guilty of the commission of the crime, they would have been entitled to their discharge out of custody; the Criminal Code makes no provision for detention in such a case.

Meredith J. A. who delivered the judgment of the Court, said that *persons held under an order of the Lieutenant-Governor consequent upon an acquittal on account of insanity are in lawful custody under a sentence of imprisonment for less than life.* It would appear that the Court classed an "insane asylum" as a prison.

There is no obligation on the Lieutenant-Governor to detain a person acquitted of a serious crime by reason of insanity in a mental institution. The person can be detained in a jail. This point is made clear in R. v. Coleman 47 Can. C.C. 148 where Rogers J. at pages 148-149 states:

> " The Lieutenant-Governor has the widest discretion as to the place and manner of the confinement ordered. The prisoner is presumed to be insane under the circumstances and it is the duty of the Crown represented by the Provincial Government to keep him in safe custody for the purpose of protecting the community."

It matters not that the person acquitted by reason of insanity is sane for all purposes at the time he stands trial. Upon his acquittal he is preventively detained upon the warrant of the Lieutenant-Governor, for a time indeterminate, perhaps for life. In Detention of the Mentally Disordered (supra) at pages 380-381 the learned author states:

> " Although it is open to the Lieutenant-Governor of a province to detain a person acquitted on account of insanity in a prison, it is currently the practice to detain him in a mental hospital. Although some persons acquitted on account of insanity should properly be detained in mental hospitals, mental hospitalization based upon an acquittal on account of insanity is always a non sequitur.
>
> Who is properly detained in a mental hospital? Surely the answer is "a person with respect to whom a doctor has issued a certificate"? That is, a person who suffers from mental disorder to such an extent that he requires institutionalization. A medical certificate of a doctor gives his opinion that the person requires hospitalization at the time he issues the certificate. A verdict of acquittal on account of insanity is a Court finding, not a finding of doctors. *The verdict is based upon the individual's mental condition at the time of the offence charged, perhaps months or indeed years before.* The only present finding that a Court makes is on the issue of fitness to stand trial. In order for a verdict on the issue of guilt or innocence to be rendered, an accused must have expressly been found fit to stand trial, or indeed it could be that the issue did not even arise. The fact of the matter is that there is no finding either by the Court or by the doctors of the mental condition of the individual at the time of the verdict.
>
> *The truth is that detention under the warrant of the Lieutenant Governor consequent upon an acquittal on account of insanity is preventive detention for a time indeterminate, perhaps for life. It makes no difference*

whether the individual is certifiable or even treatable. Such detention often has the appearance of punishment. Professor Desmond Morton, in his 1962 C.B.C. University of the Air Series, spoke on this point:

> What of a person accused of crime who successfully sets up the defence of "Not Guilty by reason of insanity"? As I have earlier pointed out, such a defence is not likely to be raised except in a case of murder. Why? The answer is to be found in the disposition of one who successfully relies upon the defence of insanity — he does not leave the dock a free man. Instead, he is detained in a mental hospital during the pleasure of the Lieutenant-Governor. *As very few persons so confined have ever been released, it is small wonder that the defence is raised only in the hope of avoiding execution.* It would take an orator of the greatest persuasiveness to convince the seventy-odd murderers locked up behind bars in the Ontario Hospital at Penetanguishene that they are not being punished. Of them, it must also be remembered that many have been found insane by a jury of laymen (no doctor is liable for jury service) applying the non-medical tests in Section 16 of the Criminal Code.

Under what circumstances should a person acquitted of a serious crime by reason of insanity be released from his detention by the Lieutenant-Governor. The learned author of Detention of the Mentally Disordered at pages 382, 383 and 384 paints the following bleak picture:

> " Taylor's Medical Jurisprudence does not paint a bright picture in considering the release from mental hospitals of persons once involved in crime:
>
> > In forming an opinion as the propriety of discharging a person who has once been confined as a patient in a mental institution, the particulars of his case should be examined with the same caution as if the object were to confine him for the first time. It may also happen that an individual has a lucid interval at the time of the examination, in which case it will be necessary to make more than one visit. *One who has been guilty of a heinous crime like murder, should never on any pretence be discharged.* There are often long lucid intervals in insanity in a form in which homicide has been attempted, and it is impossible to be certain that the disease is entirely removed. The case of a clergyman named Watson, who shot at the Master of the Rolls, is a case in point. He made repeated applications to be liberated from the Broadmoor Criminal Lunatic Asylum on the alleged ground that he was quite sane; but the Home Secretary refused to accede to this. At length he made a murderous attack upon the medical superintendent of the asylum. . . .
> >
> > A medical man cannot always be responsible for unfortunate consequences of this kind; but these and other similar instances show that *great risk is incurred in hastily allowing the discharge of a mental patient who has once been guilty of a crime.*

The issue of Taylor's Medical Jurisprudence referred to is the 10th Edition which was published in 1948.

A last quotation from Detention of The Mentally Disordered (supra) which should be looked at appears as follows at page 386:

> " Acting through its Lieutenant-Governor, and without the law on this point being changed, a province can deal with the release of such person in virtually any way. The discretion of the Lieutenant-Governor has in the various provinces been exercised in different ways.
>
> The McRuer Report mentioned the position in Saskatchewan. Two committees of review were established in that province in 1946. *Although these committees still exist, they are apparently used sparingly* because the psychiatrists have become discouraged. *There seems often to have been a division between the two legal members and the psychiatrists,* and because the decision had to be unanimous, the status quo was maintained. Furthermore, the committees have only an advisory function.

> As opposed to the Saskatchewan position with its general committee, in 1962 a special committee in Alberta was appointed to consider one case, following a petition to the Lieutenant-Governor of that Province. In that case, a committee of three was appointed; (1) the Chief Justice of the Trial Division of the Supreme Court of Alberta, (2) the medical superintendent of the mental hospital involved, and (3) the Deputy Attorney-General of Alberta. The committee recommended to the Attorney-General the advice that he should give to the Lieutenant-Governor.

It is probable that the Ombudsman did not have the opportunity of examining the above authorities. It is therefore submitted that if he had done so, he would have given greater weight to the matters hereinafter set out and would have reached different conclusions.

Since the Ombudsman refers in his letter of November 27, 1968, to his letter to you of June 28, 1968, the June letter is of great importance. From it, it is apparent that the Ombudsman is of the opinion that the complainant was wrongfully detained in the mental hospital from September, 1945 until his release in July, 1968. It is also apparent that his criticism is, in the main levelled at the Deputy Attorney General. This latter observation is born out by the letters referred to.

Since six of the eight letters referred to, and a seventh, the undated letter, all were received by the Deputy Attorney-General in the years 1945, 1946, 1947 and 1948, it becomes necessary to closely examine the file respecting these years. We must ascertain during that period what, if any acts or omissions took place for which the then Deputy Attorney General can be criticized.

Immediately after June 18, 1946, when Mr. Justice O'Connor ordered that the complainant be placed in strict custody in jail and there kept pending the pleasure of the Lieutenant-Governor, Mr. Wilson, the Deputy Attorney General received a letter from Mr. Patterson, Crown Agent. This letter dated June 20, 1946, which has been overlooked by the Ombudsman, is of such importance that it is proposed to quote the following part of it:

> " The trial as to the murder of ———————— lasted two days and part of an evening. The jury after being out for more than an hour brought in a verdict of "Not Guilty" by reason of insanity. *There should have been a verdict of "Guilty" as charged. The Trial Judge from his charge would indicate that that was also his opinion.* However, the jury no doubt had difficulty in getting over the evidence of Dr. McAllister . . . Dr. McAlister made much of "uncontrollable impulse". *The judge in charging the jury made it plain to them that "uncontrollable impulse" was no excuse under our law. Mr. Macdonald in addressing the jury constantly reminded them of the fact that the complainant would be held in custody for the rest of his life* if they found him insane and they would lose nothing by bringing in that verdict. I had in mind the fact that the Minister of Justice would have reduced the penalty to one of "Life" if we had obtained a verdict of "Guilty"."

This letter caused the Deputy a good deal of concern as can be seen from other letters on the file. It indicated that the Jury might well have acquitted a dangerous criminal instead of a mentally deranged man. The law at that time was harsh respecting the detention of persons properly found "Not Guilty" of murder by reason of insanity. Indeed, as can be seen from the above quotation from Taylor's Medical Jurisprudence there, at least as late as 1948, was strong authority to the effect that such a person should not under any circumstances be released from detention. What then of the situation respecting the complainant who perhaps should properly have been convicted of two murders? Would not even more caution be in order before advising the release of such a person? Would not the protection of society be a factor of even greater importance than in the case of a person properly found "Not Guilty" by reason of insanity?

With these questions very much on his mind the Deputy wrote to Dr. MacLean, the Medical Superintendent on June 24, 1946, respecting the possibility of having the complainant removed from jail to the Provincial Mental Hospital. The letter to a degree is critical in that it states as follows:

> " You will recall that you advised that the complainant was sane and competent to stand trial, but it would appear that the jury rendered the verdict they did because defence counsel in effect told them that the complainant would be kept in an institution for the rest of his life."

In the letter the Deputy asked Dr. MacLean to advise whether the complainant could be said to be mentally ill for the purpose of his being removed to the mental institution.

In a letter of reply dated June 25, Dr. MacLean stated in part as follows:

> " Such being the case, it would seem advisable and in order to transfer the patient to this hospital under section 970 on the basis of the fact that the patient is a mental defective. If it be in order for your Department to instruct us that the patient should be permanently institutionalized, it would simplify matters as far as we are concerned.
>
> In cases of this nature there is always a tendency for them to come under consideration from time to time, with a view to affecting their discharge. *However, since there is a possibility of recurrence of the active psychosis, it seems only fair that the public should be protected in case murderous tendencies should again accompany the attack.* Actually, the patient in his present state might get along quite well out of an institution. Who might question our right to detain the patient under such circumstances.* *Because of this latter tendency, on the part of those who would not be held responsible should anything of an untoward nature* arise, instructions from your Department to retain the patient, would support our contentions that he should be institutionalized.

The above letter is not referred to by the Ombudsman. The stand expressed in it, by the Superintendent is so clear that any subsequent deviation from this stand by him, if indeed there was a deviation, cannot be seriously considered. In this regard it is of importance to note that the letter of April 2, 1946, referred to in the Ombudsman's letter was written before the trial and hence before the opinion expressed by Dr. MacLean in the letter of June 25, 1946.

In his letter of June 28, 1968, the Ombudsman makes reference to two letters written to the Deputy by Dr. MacLean. These are dated June 16, 1947 and September 2, 1947. To explain the situation giving rise to these letters, it is necessary to look at a letter dated June 9, 1947 written by a Solicitor, G. D. Noble to the Deputy. In this letter Mr. Noble advises that he had been requested to by the complainant's mother to arrange the complainant's discharge from the mental hospital. Mr. Noble advised that the mother was of the view that there was no justification or legal right to detain the complainant now that he had been certified and found sane. The Deputy, by *letter dated June 10, 1947* sent this letter to Dr. MacLean for his views and as a result Dr. MacLean wrote the aforesaid letter of June 16, 1947. The Ombudsman has omitted any reference to the following wording in this *letter of June 16, 1947:*

> " Since we cannot state without reservations that he would not develop another psychotic attack it was only logical that it should be suggested by the Court that he be institutionalized indefinitely because of the potential danger involved if he should be released.
>
> His divorced wife quite naturally has claimed protection lest, if released, he should try to harm her.
>
> It occurs to me that if his mother wishes to assume responsibility for him, and will give assurance that she will take him to Ontario, and undertakes as well to be on the alert for any signs of any future attacks, that he might be allowed to leave in her care."

It is submitted that this letter offered little assurance that the complainant's release would not be detrimental to society. Note that the Doctor felt that the mother should be cautioned to be on the alert for future attacks.

The Deputy wrote a further *letter of June 27th* to Dr. MacLean seeking further information and then received *Dr. MacLean's memorandum of July 3, 1947* which stated:

> " Her obligations would consist of being on the alert for any evidence of mental abnormality which she would then report to the proper authorities wherever she might be living."

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* The omission of 18 words in this quotation is not a typographical or printer's error. The words were omitted from the original Opinion submitted to the Ombudsman by the Dept. of the Attorney General. The letter in full, including the missing words, will be found on page 75.

It might be added here that at the time Mr. Gray was acting as Deputy Attorney General.

Mr. Gray was in doubt about the matter and advised Mr. Noble accordingly. The matter was then allowed to stand over until August 1947 when Mr. Wilson returned from his vacation. On August 15th, Mr. Wilson wrote to Mr. Justice O'Connor advising of the request being made by Mr. Noble to have the complainant released to the custody of his mother.

On *August 16, 1947* His Lordship replied to this letter as follows:

> " I have your letter of the 15th instant. *In my opinion if the complainant is released he will kill someone else.*
>
> The jury found he was "Not Guilty by reason of insanity" and I do not hestitate in recommending that he be committed indefinitely in gaol under section 966 of the Criminal Code. If you do not agree I suggest that the complainant should be tried on the remaining charges which were stayed when he was acquitted of murdering ———————— viz. the charge of murdering ———————— the attempt to murder ———————— and the attempt to murder ————————.
>
> I would suggest that he should first be tried on a charge of attempt to murder and that the venue should be changed from ————————.
>
> *If you read my charge in the ———————— case you will see what I thought about the guilt of the accused.* Unfortunately, the jury accepted the evidence of Dr. McAlister and Dr. Byers that in their opinion the accused was insane when he committed the murder and *the assurance of counsel for the defence that the complainant would be kept in custody."*

On August 20, 1947 Mr. Wilson wrote to Dr. MacLean enclosing a copy of his letter to Mr. Justice O'Connor and His Lordship's letter in reply. Mr. Wilson stated as follows:

> " I am inclined to agree with the views expressed by Mr. Justice O'Connor, and feel that considerable risk would be incurred if the above named were released. My present difficulty is that there appears to be no evidence that he is insane or mentally ill, but having regard to the fact that you state he is a high-grade mental defective, and his past history, I am wondering whether you would be prepared to reconsider the whole matter and advise whether you consider this man is mentally ill and should be confined to a mental institution.

On August 20, 1947 Mr. Wilson acknowledge the letter of Mr. Justice O'Connor, in which he stated:

> " I am again taking the matter up with Dr. MacLean to see if he can certify that this man is mentally ill, and should be confined to a mental institution, which in my opinion would be sufficient authority to enable us to continue holding him under a warrant of the Lieutenant Governor. If this cannot be obtained, consideration will be given to the question of trying the accused on the remaining charges outlined in your communication.

On August 22, 1947 Mr. Justice O'Connor replied as follows:

> " I have your letter of the 20th instant and I have discussed the matter with the Chief Justice and some of the judges. *We do not agree that you cannot detain the complainant unless he is certified as mentally ill.* Our feeling is that the sentence of the Court that the accused be detained in the Fort Saskatchewan Gaol should be carried out and that it would be dangerous for the Lieutenant Governor to release him.

On *September 2nd, 1947* Dr. MacLean wrote to the Deputy and the Ombudsman has set out an extract of this letter in his letter to you of June 28, 1968. However, the rest of the letter should be looked at to explain the context of the words referred to by the Ombudsman. Of importance are the following portions of the said letter:

> " In reply to your letter of August 20th, while I agree with the potentialities of the situation are very serious, I also believe that the problem involved is one which should be possible of settlement by judicial authorities . . .

This all leads to the question as to whether or not the Department of Justice should establish an Institution for the custodial care of individuals who have committed serious crimes and who are potentially likely to repeat them, thus relieving hospitals of such responsibilities."

In reply to this letter the Deputy on September 12, 1947 advises Dr. MacLean as follows:

" In view of the very definite opinion of Mr. Justice O'Connor that the above named should be held in confinement, I think he should not be released from your institution.

I agree that there should be some Dominion institution to which persons of this nature should be sent, but as that seems to be something which cannot be accomplished at the present time, it would appear that your Institution is the most suitable place for him to be confined . . . "

Mr. Wilson then wrote to Mr. Noble as follows:

" I have taken this matter up with the Medical Superintendent of the Provincial Mental Hospital and also consideration has been given to the course of the trial of this man, and it has been decided that it would be dangerous to release him from the Institution.

Under the circumstances it is felt that this patient must be detained under the provisions of the Lieutenant Governor's warrant."

The next letter refered to in the Ombudsman's letter of June 28, 1968 is *an undated letter from the complainant* addresed to the Lieutenant Governor. This letter was forwarded to the Deputy Attorney General by Dr. Michie who was then the Medical Superintendent. In the letter the complainant advises the Lieutenant Governor of the circumstances of his detention and indicates that if he is released he will not molest his wife or her family and that he will go to Ontario to his aged mother. The undated letter was apparently written in or about the *month of July 1948.*

The Ombudsman states that since the complainant was seeking the clemency of the Lieutenant Governor the letter should have been brought to his Honour's attention. With respect the writer cannot agree since only a few months earlier the application for the complainant's release by his mother had been thoroughly investigated by Mr. Wilson. Since then nothing new had happened which in any way could alter the Deputy's decision. Acting upon the advice of the Deputy the Lieutenant Governor could not have granted the complainant's application for release.

The complainant's undated letter was followed by a letter dated *December 7, 1948* from one, George A. Scott, wherein Scott undertook to take the complainant as a hired man on his farm at Rimbey, Alberta. *Although the Deputy had not replied to the complainant's undated letter, he did reply to Mr. Scott stating that it was not possible to release the complainant into his care.*

In 1949 the complainant retained Mr. Neal D. Maclean to look into his detention and Dr. Michie asked the Deputy's direction as to how best to deal with Mr. Maclean's inquiry. Mr. Wilson suggested that Mr. Maclean be advised that the accused was mentally deficient and potentially dangerous and that after due consideration it had been decided that his release could not be recommended by the Lieutenant Governor. No further relevant letters appear on the file until April 26, 1967.

B. The period of time which elapsed after the decision was taken to set up a special board to recommend the complainant's release and the date of his actual release.

We have seen that in the period from 1945 until 1967 the criticism of the Ombudsman is, in reality, levelled at the Deputy Attorney General. As will be seen, his criticism under this heading appears to be levelled at other officers and members of the Department. It is therefore proposed to examine the materials on file to see if his criticism is well founded.

On April 26, 1967 Dr. Byers, Superintendent of the Alberta Hospital at Oliver inquired whether the complainant might be freed. In answer to this letter the Assistant Deputy on May 24, 1967 wrote to the Superintendent asking to what extent the complainant was mentally deficient. On June 1, 1967, Dr. Byers stated that the complainant was no longer a mental defective.

On June 6, 1967, the Assistant Deputy wrote to Dr. McPherson asking him to advise the complainant and to recommend how the matter should be disposed of. On June 17, 1967, Dr. McPherson by memorandum addressed to the Assistant Deputy advises in part as follows:

> " This man was not psychotic when interviewed and the hospital files indicate that he has not been psychotic for nearly 30 years. He has made a very good adjustment under the sheltered hospital life and does not appear anxious to break away from it. He thinks, and I agree with him, that he would have to adjust to outside life gradually. *I would think that he would certainly have to remain under supervision during this adjustment period. As to whether or not he would be a possible danger to his wife, I do not think one could be dogmatic.* Certainly he showed no emotional reaction when talking about her. I would agree that it would be reasonable to release him."

On June 30, 1967 the Assistant Deputy wrote to the Chief Justice, requesting that he sit as Chairman of a Committee to consider the recommendation that the complainant be released from the mental hospital. The Chief Justice was requested to indicate a date for the hearing and to advise if he would be willing to sit on the Committee. On July 6, 1967 the Chief Justice replied to this letter stating that in his opinion he should be the sole commissioner of such a committee. He also stated that he would be able to so sit either during the summer months or in the month of October.

At this point an unfortunate incident happened at Frog Lake, Saskatchewan* in that a person released as cured from a mental hospital murdered several people within a few days of his release. The Assistant Deputy and Mr. Karoles were deeply concerned about this and in consequence Mr. Karoles sought the opinions of a number of psychiatrists respecting the possibility of recurrence of the complainant's psychosis.

On August 17, 1967 the Assistant Deputy wrote to Dr. Byers asking whether or not he considered the complainant's plans to be realistic. In speaking of these plans the Assistant Deputy referred back to Dr. McPherson's report of June 17, 1967.

On August 23, 1967 Dr. Byers replied to the Assistant Deputy stating that in his opinion the complainant's plans for the future were realistic. He added that he was in agreement with Dr. McPherson's recommendation.

The Assistant Deputy decided to again call a Committee together and on February 9, 1968 a letter was written to Mr. Justice Greschuk. In this letter reference is made to a suggestion of the Chief Justice that an Edmonton Judge sit on such committees in all cases where the inmates seeking release are in custody in Ponoka or points north. Mr. Justice Greschuk by telephone stated that he would be willing to act on the committee but that he would not be able to do so until May. Mr. Karoles related this information to Dr. Byers on March 4, 1968 and in his letter requested the views of Dr. Byers.

In a letter dated March 27, 1968, Dr. Byers replied stating that May would be a suitable month for him. He also advised that the complainant had developed a swelling on one of his ribs and that this was being investigated by the Cancer Clinic.

On April 1st, 1968 Mr. Karoles wrote to Dr. Byers stating that the Edmonton members of the Supreme Court preferred the old system in which three members sat on the committee, one of these being a psychiatrist. Mr. Karoles asked whether Dr. Byers would be able to act in this capacity.

It would appear that Mr. Justice Greschuk was not able to sit on the committee in May because on April 1st, 1968 Mr. Karoles wrote to Mr. Justice O'Byrne asking if he would be prepared to chair the committee in May.

On April 3rd Dr. Byers wrote to Mr. Karoles stating that he would be pleased to sit on the committee and suggested that Dr. McPherson also be invited to sit on the committee.

On April 19, 1968 Dr. Byers telephoned Mr. Karoles advising that the complainant would have to be transferred to the University of Alberta Hospital for tests. Dr. Byers suggested that for this reason the committee hearing might have to be delayed.

Subsequently on May 8, 1968 Dr. Byers wrote to Mr. Karoles advising that the complainant might have to have a kidney removed. He stated that he would advise Mr. Karoles when the complainant would be well enough to attend the hearing.

On May 8, 1968 the Ombudsman commenced his investigation as the result of a letter dated February 5, 1968 sent to him by the complainant. On July 2, 1968, the complainant was released under the Order of the Lieutenant Governor.

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* I can only surmise that the place referred to is Shell Lake, Saskatchewan? Frog Lake is in Alberta. G.B.Mc.

68-110-36 (Continued)

C. Observations and Conclusions.

1. It is submitted that from the day of the jury's verdict until the date of his release the complainant was at all times properly detained at the mental hospital at Ponoka. In the case of a person found "Not Guilty" of murder by reason of insanity, that person does not go free but is instead preventively detained during the pleasure of the Lieutenant Governor. The Lieutenant Governor could detain him in jail but, in most instances, detains him in a mental hospital.

It matters not that at the time the person stands trial he appears to be sane for all purposes. In this regard the law is punitive. The law is concerned about protecting society from a possible recurrence of the psychosis which resulted in the original crime.

The law has been particularly harsh in respect to persons found "Not Guilty of Murder" by reason of insanity. Indeed there is strong authority to the effect that persons being found "Not Guilty" of murder by reasons of insanity should never under any circumstances be released from detention.

In the complainant's case there is a good deal of doubt that the jury reached a proper verdict when it found him "Not Guilty" of murder by insanity. There is evidence on the file that the jury acted without properly applying the law as to insanity. There is also evidence that the jury was much influenced by the statement of the complainant's solicitor that he would be placed in detention for life even if they found him "Not Guilty" by reason of insanity.

The Deputy Attorney General as a legal officer of the Crown is bound to take cognizance of the law in such cases and it is apparent from reading the file that the Deputy Attorney General has properly appreciated and applied the law.

Throughout this file the one clear fact emerges that none of the medical experts involved could give any clear assurance that the complainant could be released without any possibility of his psychosis reoccurring. Even Dr. McPherson in his memo of June 17, 1967 to the Assistant Deputy states that the complainant, if released, would have to remain under supervision. He goes on and states that he does not think that one should be dogmatic as to whether or not the complainant would be a possible danger to his wife.

The Deputy Attorney General made a careful investigation into the possibility of releasing the complainant on more than one occasion. Perhaps the most compelling factor in his decision not to release the complainant was the stand taken by Mr. Justice O'Connor who was the judge presiding at the complainant's trial. In the words of Mr. Justice O'Connor "In my opinion if the complainant is released he will kill someone else".

Much has been made by the Ombudsman, of the fact that the undated letter addressed by the complainant to the Lieutenant Governor in 1948 was not referred to the Lieutenant Governor by the Attorney General. It is the submission of the writer that the situation respecting the complainant had not changed from what it was a few months earlier when the Deputy Attorney General had carefully investigated the advisability of releasing him. There, therefore, was no necessity for the Deputy Attorney General to being this letter to the attention of the Lieutenant Governor.

Much weight has been placed by the Ombudsman on certain parts of letters written by the Medical Superintendent and other Doctors to the Deputy Attorney General and other persons in this Department. Insofar as these letters are concerned they only indicate medical opinion. The Deputy Attorney General is entitled to look at and indeed must be bound by the law in this field. In the writer's opinion he has in no way been negligent in properly applying the law nor has he omitted to apply the law.

2. There was no undue delay in the arranging of a commission to hear the recommendation for the complainant's release. As early as 1962 a practice grew up in Alberta under which a three man commission would hear applications for the release of those inmates of mental institutions who had been detained as a result of having been found "Not Guilty" of a crime by reason of insanity. This practice is considered a laudable one in "Detention of The Mentally Disordered" (supra). From the month of April, 1967, when Dr. Byers inquired whether or not the complainant might be freed, until the day of his release no member of this Department was in any way remiss or negligent. Reasonable steps were taken to have a commission appointed and most of the delay encountered in the setting up of the commission was due to the unavailability of a judge. The rest of the delay was due to the necessity of the complainant being treated in the hospital.

68-110-36 (Continued)

3. In my earlier conversation with you we discussed Bill c 195 which was first introduced to Parliament in September, 1967. We agreed that the provisions of this bill respecting persons held in detention following their acquittal by reason of insanity are most desirable in that they set up a Board of Review and provide a specific procedure under which persons such as the complainant can periodically have their cases reviewed by that board. At last the Federal Government is giving some guidance respecting the legal proceedings involved in the detention and ultimate release of persons acquitted by reason of insanity.

Unfortunately, these said provisions are not yet law although it is hoped that they will become law at the present session of Parliament. The ultimate responsibility for advising the Lieutenant Governor in these matters therefore still rests with the Attorney General.

At our said earlier discussion we both agreed that you as a Law Officer of the Crown acting on behalf of the Attorney General with his full knowledge and consent were justified in agreeing with the Ombudsman to the immediate release of the complainant and in recommending such release to the Lieutenant Governor. You were quite entitled to take into consideration the long detention of the complainant and his illness in reaching your decision to advise the Lieutenant Governor that it was in order to release the complainant. Your decision was made easier by the fact that the Ombudsman is sharing with you the responsibility for it.

4. With this memorandum I am enclosing a Recommendation for an Order-in-Council dealing with the payment of a pension and other moneys to the complainant. You will recall that in our earlier discussions we both felt that this is a matter which should more properly be the concern of the Department of Public Welfare or of some other department (other than our own). However, we both felt that available welfare schemes did not appear broad enough to cover the complainant's situation. For this reason, we agreed that it was within the jurisdiction of the Ombudsman to recommend to the Executive Council that welfare payments be made to the complainant.

On the other hand you shared my opinion that section 12 (1) (b) of The Ombudsman Act does not permit the Ombudsman to investigate the actions taken by the Deputy Attorney General or by the Assistant Deputy Attorney General in connection with the release of the complainant. Without that jurisdiction the proposed criticisms of these officials, even though it were justified, which we do not believe to be the case, should not be made."

———— ENDS ————

I must confess to some surprise at the opinions expressed that I lacked jurisdiction to investigate this matter. My surprise arises from the fact that every recommendation I had made in this case had been accepted. The almost immediate unconditional release of the complainant had followed my first recommendation. My subsequent recommendation for temporary financial aid and my eventual recommendation for a permanent pension and other financial assistance had been accepted and had been acted upon by the Executive Council resulting in the enabling Orders in Council. At no time until the receipt of this Opinion on January 9th, 1969, had any question of my jurisdiction been raised with me by anyone. At this stage the challenge to my jurisdiction does seem to me somewhat academic.

From the views expressed in this Opinion, I find myself in the unique position of sharing with the Deputy Attorney General, the responsibility for the release of the complainant in a matter in which I am also alleged to have no jurisdiction.

As this report is written, I have been advised that the complainant is awaiting a bed in a Cancer Hospital preparatory to further surgery.

68-110-55

The complainant is an inmate in a Provincial Mental Hospital. He wrote me asking my assistance in seeking his release.

Investigation revealed that he was admitted to the Provincial Training School in Red Deer, now known as the Alberta School Hospital, in 1936, very close to 33 years ago. His mental age and other mental qualities are such as to fully confirm his first admission.

In 1941 he was charged with murder, the victim being a fellow patient at the Provincial Training School. He was found not guilty of murder by reason of insanity in October of 1941. He was then transferred to an Alberta Mental Hospital to be detained, by authority of an Order of the Lieutenant-Governor, issued under the provisions of the Criminal Code of Canada. He has been detained ever since, a period of over twenty-seven years.

During that time he has escaped from the Hospital on numerous occasions, his last being in 1955, when he escaped in the company of another patient. During the time that he and the other man were at large, an elderly man in the vicinity of the Hospital was attacked and subsequently died. There is some reason to suspect that this patient or the man with whom he escaped or both, were involved in the attack. There is no actual proof of this suspicion. However, as a result he has been kept under maximum security, and quite understandably. He is considered by the Hospital authorities to be very dangerous and requiring very close supervision.

My investigation also revealed that there has never been a Commission or any form of medical hearing in regard to this patient. Thus there has been no review by an independent tribunal, of his confinement in a Mental Hospital, and as I have indicated elsewhere in this Report, this is a situation which, in my view, should no longer be allowed to continue.

I think the results of any such tribunal can be quite easily forecast, and I may say that I have personally observed this patient. None the less it is my firm view that the public mind can never be entirely satisfied as to the manner in which patients committed in this manner are dealt with, until such time as there is provided, some form of independent tribunal for review at regular stated intervals.

On December 12th, I brought this case to the attention of the Deputy Attorney-General, and I asked that some form of hearing be considered for this patient. I also raised the suggestion that if the patient could be released from detention under authority of the Lieutenant-Governor's warrant, and certified under the Provincial Mental Health Act, he could from thereon be dealt with as a medical patient for whom there are adequate review procedures provided by law.

I received a letter from the Department of the Attorney-General dated December 19th, advising that the necessary documentation and recommendations, for the purpose of having this patient placed under the direction of the Minister of Health were being prepared. Under such circumstances a Certificate may be issued and a review of his case heard by the Review Panel provided for in the Mental Health Act. He will cease to be a legal prisoner held under the Criminal Code, and will become a medical patient properly certified under the provisions of the Alberta Mental Health Act, and with recourse to the Review procedures as provided for under that Act.

Such action has now been taken by Order of the Lieutenant-Governor. No question of my jurisdiction was raised.

68-110-50

The complainant was serving a sentence of one year's imprisonment in an Alberta Gaol. He reported to the Ombudsman's Office that he had been arrested in Montreal on a warrant held by the Police in Alberta, and had been escorted back to Alberta by the R.C.M.P. where he was tried and sentenced, as mentioned above, for his offence.

He was due for release in December, 1968, and his complaint was that he had applied through the Warden for his fare back to his home in Montreal, and that the Warden had indicated that he had no authority to grant such transportation. The prisoner had then applied to the R.C.M.P. for transportation to Montreal, and had been informed, quite rightly, that the R.C.M.P. could not provide his transportation to Montreal.

The complainant stated to me that he had no funds and, "by refusing to help me help myself, the Administration is encouraging my criminal activities". I later ascertained that his activities in his chosen field of endeavour, prior to his most recent conviction, did not appear to have suffered from lack of encouragement.

There is Statutory provision, giving the Attorney-General a discretion to supply transportation to prisoners who have served their term of imprisonment, upon leaving the Gaol.

As the prisoner anticipated his release within a matter of a day or two, I communicated directly with the Director of Correction Services of the Department of the Attorney-General. It was not necessary for me to make any recommendation, as the Director, after hearing the circumstances, advised me immediately that transportation would be provided for the prisoner in question to his home in Montreal. I later confirmed this conversation in writing to the Director, and also advised the prisoner in writing of the good news. He replied to my letter thanking me for the action taken, which I suspect may, in the long run, prove to have been an economical one for the Province. The case was concluded and shown as "Rectified."

68-120-6

The complainant had applied to enter the Biological Sciences Class at the Northern Alberta Institute of Technology. His application was declined with a refund of his registration fees.

He complained to the Ombudsman and his complaint was referred to the Deputy-Minister of Education.

I was advised by written memo of the Deputy-Minister dated September 3rd, 1968, that the Vice-Principal of the N.A.I.T. had forwarded to me an explanation of the refusal to admit the complainant into this particular course. The complainant was apparently advised of other courses available.

Considerable correspondence followed, as to the credits which the complainant had acquired to make him eligible for the course.

Eventually my Office was advised that the complainant would be accepted, and he was so notified. There appears to have been some difficulty in ascertaining the complainant's full qualifications, before his application reached the authorities who select the candidates. This misunderstanding may have been the reason for his original rejection. He was advised by this Office that he had finally been accepted and the complaint was therefore "Rectified."

68-120-7

The complainant in this case was the President of a Jewish Parochial School Association. His complaint dealt with one school with a registration of some sixty-five day school children and thirty night school children. The teaching staff consisted of four English teachers and four Jewish teachers.

During a change over of teaching staff two new teachers were appointed, only one of whom is concerned with this particular complaint.

The teacher in this case was a French-speaking Canadian lady from the Province of Quebec, where she had previously taught school for four years, and who now resides in the Province of Alberta. She is bilingual and it was intended that she would teach several subjects, one of which was to be conversational French.

It should be understood that the children in this school go only to the sixth grade, and then enter the General Public School system in their seventh grade.

However, the School Association was advised by the Registrar of Teachers, an officer of the Department of Education, that this particular teacher could not receive certification to teach in Alberta. The primary reason apparently was that she did not have her Grade 12, and it should be explained that in the province of Quebec, I am advised that students may enter the two year Teachers College Course after completing Grade 11. Apparently this teacher did so and after graduating from the College taught four years in the city of Montreal.

The Board then asked if the Department would give a Letter of Authority which would allow the teacher to teach at the school while she was at the same time attempting to get her Grade 12 subjects through night classes. This proposition was also refused.

The Board of the school was understandably concerned as the beginning of the scholastic year was immediately upon it, and if this particular teacher could not be authorized to teach for that year, there would have to be a change in the curriculum to suit whatever other teacher could be found.

My preliminary investigation revealed that the standard for this province for such teachers includes the necessity of holding a Grade 12 certificate, and I fully appreciated the fact that if the Department of Education permits an erosion of its standards to suit individual cases, the time may well come when the standards adopted no longer have any real meaning. Furthermore, precedents will have been established, which well may be used for submissions in other cases. I therefore concerned myself only with the decision to decline to provide a Letter of Authority.

I was advised by the Department of Education that there exists within the Department a Certification Referral Committee to which an appeal may be made by persons from other jurisdictions outside the province of Alberta, who have been refused certification to teach in the province on the grounds that they do not meet the standards as laid down for this province. I requested the Department to advise me whether the complainant had been advised of the right of appeal to the Certification Referral Committee. My request was submitted by telephone on the 3rd of October, and again in writing on the 10th of October. No reply having been received, my office again brought the matter to the attention of the Department on the 25th of November and I was provided with a copy of the letter from the Department to the complainant dated November 29, 1968.

68-120-7 (Continued)

At that same time I was advised that the file in this case had been misfiled in the departmental offices and could not be located for some time. Immediately upon it being located, the complainant was advised of the right of appeal of the teacher in question.

As, of course, it was now clear that a new avenue of appeal had opened to the complainant, other than through the Ombudsman's office, I was obligated to decline to continue my investigation as required by the Act.*

I so notified the complainant advising him that of course he could resubmit his complaint to me if he did not receive what he considered satisfaction after the further appeal was heard. I also advised the Department of Education that I was closing my file and gave the reasons therefor.

* 12(1)(a) — The Ombudsman Act.

68-130-4

The complainant in this case is a University graduate employed in a professional capacity, and at the same time preparing himself for more advanced degrees in his profession.

His complaint to me was as follows. In the summer of 1967, he was admitted to an Alberta Mental Hospital, having been apprehended by the R.C.M.P., and having been, quite properly, medically certified as suffering from a mental illness.

On the night of his admission to the Mental Hospital, he had managed to jump through a second story window to the ground, at which time he broke his left ankle and his left heel. The window had been previously broken, and had been boarded up temporarily.

According to his own story he was given medical treatment and placed in a cast, but eventually was taken to a Hospital for a surgical operation on his ankle.

While at that particular Hospital he was in the psychiatric ward and states that he had excellent medical care. At the time he was discharged from the Hospital, having completed the necessary surgical attention to his physical disabilities, he was also discharged as having recovered from his mental condition.

He very soon obtained an appointment in his own profession, and was able to continue his studies towards a more advanced degree.

However he was still having difficulty with his left ankle, and was placed under the care of an Orthopaedic Surgeon. According to his own story, he may require one or two further operations and there were other medical complications, which indicated the possibility of some permanent disability to his ankle. His profession is such that he may be required to walk long distances over rough terrain, and there was some question as to whether he would be able to do so. I make it very clear at this point, that this is simply the information which I have received from the complainant.

Sometime after his release from the Hospital, he received a bill in the amount of $396.85. This bill was composed of $85.85 from the Alberta Mental Hospital in which he had been confined, and a bill of $311.00 for the period of time that he was in the Medical Hospital. Sometime later he received a further bill from the Medical Hospital in the amount of $311.00.

Not being sure where he stood, he paid a small amount to the Medical Hospital towards his bill, and not long before he discussed the matter with me, that amount of $50.00 had been returned to him by the Medical Hospital. I should mention that he was not covered by Medical or Hospital Services at the time of his accident. His problem was apparently that he had been out of his former Province sufficiently long to lose out on the Medical Services for which he had paid in that Province, and he had not yet been in Alberta sufficiently long to qualify under the Alberta Health Plan.

The problem was therefore, as to who is responsible for his hospital bills incurred, and what, if any, responsibility lay upon the Mental Hospital for the injuries he had received, in the event that such injuries should eventually restrict him in the pursuit of his profession.

68-130-4 (Continued)

My investigation revealed that there had been some minor mix-up in the accounting system and that it had never been intended by the Department of Health that he should be billed for the medical attention which he had received. The bills through the Medical Hospital had been paid, hence the refund of his small down payment to him. I was therefore able to ascertain that he had no large medical bills hanging over his head from his previous injuries.

However as there was a possibility that he was facing further surgical attention, including operations, the question arose as to whether he had any right to compensation from the Department of Health as a result of having jumped through the window in the Mental Hospital, during a time in which he was mentally incompetent.

As the question of medical and Hospital expenses previously incurred was now settled, and as these had been looked after by the Department of Health, there remained only the question of the future of the complainant. There was the possibility of further surgery; there was the possibility of a permanent incapacity which might have a bearing on his career, and there was of course the question of what responsibility, if any, lay upon the shoulders of the Department of Health, due to the fact that the complainant while under normal restraint in a Provincial Mental Hospital had been able to jump through a window, thus injuring himself as has been described.

I decided that as the matter of the Hospital and Doctor's bills had been settled, the complaint was rectified in so far as the Ombudsman's Office was concerned. I also decided that there was an obvious channel of appeal still available to the complainant from here on, namely,the right to take civil action for damages. I had received every co-operation in this investigation from the Department of Health and indeed the Deputy Minister had volunteered his willingness to have an interview with the complainant and to listen to his complaint.

I therefore advised the complainant that he should seek legal advice as to his further course of action. The complainant obtained legal advice and I had a discussion with his Solicitor, who agreed that so far as jurisdiction was concerned, the Ombudsman had completed his function in having obtained proper adjustment in connection with medical expenses.

The complainant on the advice of his Solicitor entered civil action against the Department of Health, which act at once removed me from the investigation. As the matter of Hospital bills had now been settled to the satisfaction of the complainant, I showed this complaint as rectified, and I have of course no concern in the results of any civil action entered by the complainant.

I received in due course a very nice letter from the complainant expressing to me his thanks for the action taken by the Ombudsman and I have therefore closed my file.

68-130-5

This complaint was made by a patient in an Alberta Mental Hospital held under a Lieutenant Governor's warrant by authority of the Criminal Code of Canada. This case differs somewhat from some of the others mentioned in this Report in that this patient was in fact convicted of murder in 1948 and was sentenced to death by hanging. Prior to the date of execution he became psychotic and was admitted to an Alberta Mental Hospital in January of 1949, just a few days less than 20 years ago. According to the records which have been supplied to me by the Attorney General's Department, he has not had any review or appeal hearing on the question of his sanity in that time. He is reported by the attending psychiatrists at the hospital as being still psychotic and very delusional. There is no reason to do other than fully accept this medical opinion. However, in view of the lack of any law, Federal or Provincial, requiring an independent tribunal to rule on cases such as this at regular intervals, there is, in my view, an unfair responsibility placed upon the shoulders of the medical staff of the hospital.

This patient was placed in the hospital under Federal law. The Federal Law does not yet have any provision, providing for regular reviews of such cases by independent tribunals.

I believe, that in line with modern thinking on questions of penology and on the treatment of the mentally ill, our present system of treating the criminally insane and the medically psychotic in the same institutions, is archaic. There is a strong element of restraint and confinement, which necessarily arises in the handling of the criminally insane. Our mental hospitals are, at the same time, striving to reduce the confinement and restraining aspects of treatment for those who are medically psychotic, as early as such patients can be dealt with in such a manner.

I submit that two such dissimilar programs should no longer be carried out in a single institution, and that the time has come when Mental Institutions for the criminally insane should be established and operated by the Federal Government. The treatment of the criminally psychotic is usually a long and slow process, and the precedent is already established whereby the Federal Government accepts responsibility for the imprisonment and rehabilitation of long-term prisoners.

Having regard to all the circumstances, I have closed my file.

DEPARTMENT OF HEALTH

68-130-8

The report which follows results from the first investigation which I have undertaken on my own motion, and without being the recipient of a complaint from any outside source. Such procedure is provided for in the Ombudsman Act*, although it is rarely used. This Section provides an opportunity for the Ombudsman to carry out an investigation on his own volition into matters in which there is grave public concern, but about which he has received no direct complaint from any individual or any organization.

My full investigation was completely summarized in my report to the Deputy Minister of Health, dated October 15th, 1968, which report was also studied by The Honourable Dr. J. Donovan Ross, Minister of Health for the Province of Alberta.

I do not feel that I can better condense the story of this lengthy and detailed investigation than by including in this report the complete report which I submitted to Dr. P. B. Rose, Deputy Minister of Health. So far as I am aware, this report has not yet been published elsewhere in its entirety.

The report reads as follows:

October 15, 1968,
920 Centennial Bldg.

Our File: 68-130-8
Dr. P. B. Rose,
Deputy Minister of Health,
Administration Building,
Edmonton, Alberta.

Dear Dr. Rose:

Re: Alleged Mistreatment of Patients
Alberta Hospital (Oliver)

Enquiry by Ombudsman,
Section 11(2) The Ombudsman Act.

I am writing to you, further to my letter of March 6th in which I advised you that I proposed to carry out an investigation into certain allegations of mistreatment of patients at the Alberta Hospital, Oliver, in accordance with the powers given me under Section 11(2) of The Ombudsman Act.

2. The allegations referred to, appeared on page 11 of the Canadian Magazine of February 24, 1968. The Canadian Magazine is a weekend supplement of the Edmonton Journal and the Calgary Herald insofar as this Province is concerned. They appeared in an article by G. Tori Salter, which was headed *"Five Days of Degradation"* and dealt with the experiences of the author while a voluntary female patient at the Alberta Hospital, Oliver. Miss Salter had obtained admission to the Hospital as a patient under an assumed name by feigning mental illness.

* Section 11 (2)

3. My investigations, which were carried out by both myself and an investigator from my office, dealt, in the main, with the following statement which appeared in the article.

> " A former woman patient, well educated and trained in a career, wrote to the Edmonton Journal claiming that one area of a particular ward was reserved for newly-admitted or quite ill patients who were kept there naked, with only a mattress to sleep on.
>
> " And while at the hospital, an attractive blonde high school student told me she had been sent to this area for observation. 'Two men grabbed me — they were hospital attendants — tore off my clothes and threw me into a cold cell with a stone floor,' she said. 'It was about seven-feet by seven-feet.
>
> " 'They ripped all my clothes off, tearing my blouse into pieces, yanked off my skirt, pulling the zipper out, and tore holes in my mesh stockings.
>
> " 'The room had a small, barred window and the men kept coming back to look at me. I tried to hide my nakedness by crouching in a corner. Later they threw in a heavy canvas sheet. I used it to sit on because the floor was so cold.'
>
> " An Edmonton Journal article quotes the same ex-patient as saying: 'Once an alcoholic was put in a side room, and two attendants got a bottle of liquor, poured it under the door and watched the man lick it up off the floor.' "

4. My decision to commence the investigation on my own motion, which I am authorized to do, under the authority of Section 11(2) of The Ombudsman Act, Chapter 59, Statutes of Alberta, 1967, was prompted by a statement in the Edmonton Journal of Wednesday, March 6, 1968, attributed to Miss Salter which read as follows:

> " 'Absolutely False' is the manner in which Dr. Ross (Minister of Health) brands my account of a young female patient whose clothing was ripped off by two male attendants.
>
> " The facts: Let me state that the name of this patient can be made available to a responsible official. Further that her written testimony has been filed with the editor of The Canadian. During my hospital stay, several patients, alcoholics who were 'drying out' and quite sane, testified to the institution's practice of stripping 'troublesome' female patients and throwing them naked into small cells; that their screams could be heard all over the ward. "

5. I would point out that in commencing this investigation, I was in no wise investigating the Press. Other than the conversation and correspondence which I had with the Publisher of the Journal, who was also formerly the Publisher of The Canadian, and a letter

announcing my investigation to the Editor of the Calgary Herald and the Canadian Magazine, no member of the Press has been interviewed or approached in any way.

6. This was an investigation involving a Department of the Government of the Province of Alberta, as provided for in The Ombudsman Act. My intention was to find out, if possible, whether these particular incidents could be proved to be true or false, and if true, to recommend to the Department of Health and its Minister, appropriate measures to deal with the persons responsible.

7. Despite Miss Salter's statement that the name of this patient could be made available to a responsible official, and my own written request to the Publisher of the Journal, Mr. Ross Munro of March 6, that I be provided with the name, it was not supplied to me, nor was the statement referred to made available.

8. I had a personal discussion with Mr. Munro involving my request for the name of the patient. For reasons which gave him great concern, which reasons I may say I understood, he was reluctant to provide me with the name or the statement at that time, except on a completely confidential basis. I did not feel that I should press him further for the name in view of his concern; in view of the fact that I could not accept the name conditionally, and considering that I believed it highly likely that the investigation would divulge the name in any event. None the less, the name, which Miss Salter stated was available to a responsible official, was not made available to me.

9. The investigation was commenced. Parts of it were carried out by myself, and others by an investigator for this office. Some of the enquiries were carried out jointly, particularly the inspection of the facilities of the Hospital as described in the article, as well as some other facilities of the Hospital.

10. During my investigation I received full co-operation from the Medical Superintendent in charge of the Hospital, and from other members of the staff who were interviewed.

11. The particular source of information referred to by Miss Salter was identified, as well as several others whom I believe to have supplied information to Miss Salter.

12. It was learned that Miss Salter had herself admitted to the Hospital as a voluntary patient under the name of Miss Jean MacLean. She was admitted on November 16, 1967, in the afternoon. As she herself states in her article, she expressed suicidal tendencies, and other symptoms of a depressed state of mind. She was accompanied by a man whom she identified as her nephew, and whose name she said was Ronald MacLean. She gave his address, which has been checked and found to be a former private home, converted into apartments. One of the apartments is occupied by a Press reporter, whose name is not pertinent to this enquiry.

13. Miss MacLean (Salter) was admitted to Ward 5A, and it is important to note that all female patients, who may be considered destructive to themselves or others, are admitted to this Ward for

observation. Not all patients are admitted to this Ward upon arrival at the hospital. There are others whose illness does not include deep depression or potential self-destruction, and these may well be admitted directly to "open Wards." Considering the symptoms which Miss Salter described, her admittance to Ward 5A was normal, and usual for her type of case.

14. Part of Ward 5A is separated from the remainder by a locked door, and the separated part is reserved for intensive care patients. Intensive care patients are those who require the closest supervision as they may well injure themselves or injure others. It is indeed necessary at times to use confining and restrictive measures with some of these patients. The extent of the seclusion used is entirely dependent on the risk to the patient or to those around her.

15. I am not without considerable personal experience in dealing with the emotionally ill at first hand, and I am well aware that sometimes what might appear to be strong measures of containment, are required to avoid serious injury or self-destruction.

16. I personally inspected the intensive care area of Ward 5A, and at the time of my inspection there was a female patient undergoing restraint and observation. There are a number of small rooms used for this purpose. They are not cells. They normally have one or two beds in them. They are separate from the multi bed sleeping quarters; and they are normally occupied at night by one or two patients in a semi-private hospital room capacity.

17. If it becomes necessary to seclude a female patient, the procedure which is laid down, is that those articles of furniture, which the patient may use to harm herself, are removed from the room. This usually includes bedding which can be used for self-inflicted injuries; it may even include a bed, because patients have been known to use a bed to dive headfirst into the floor or the wall; it may include portions or all of the patient's clothing. In extreme cases, a patient left with merely a brassiere can quite easily convert it to an instrument of strangulation.

18. Patients who are particularly violent may certainly have to have their clothes removed completely; confined to one of these rooms emptied of furniture, except for a mattress and a blanket made of a type of cloth which cannot be torn or ripped into lengths.

19. On occasion it becomes necessary to remove the clothing from a seriously disturbed patient, and as sometimes happens, the nurses and female staff are unable to control the patient sufficiently to remove the clothing.

20. At such times it is customary to phone to a Men's Ward to obtain the services of one or more male attendants. It is important to note that these male attendants must, according to the regulations, be checked out of the Men's Ward in which they are regularly working, and which is in an entirely separate building some distance from Ward 5A. They must also be checked into Ward 5A at the nursing station on arrival.

21. Their services are used to constrain the patient, and as much as possible a sheet or other form of cloth is placed in front of the female patient, and the actual removal of clothing is done by female staff. The policy is specific that there must always be a female member of the staff present.

22. To one who has little knowledge of the extremes of violence to which the seriously disturbed mental patient can exert himself, it is perhaps difficult to comprehend the measures which may be required in restraining such a patient.

23. I can find no evidence that patients are kept in this confinement any longer than is absolutely necessary to protect them from themselves, and to ensure their safety until the current period of hostility or depression has passed.

24. So far as I can find, there is no record that Miss Salter's informant who gave her the written statement, ever required confinement in this manner during her several admissions to the Hospital as a patient. I would add that it would be most difficult to delete from, or add to her medical record as it appears in the Daily Records kept, without such alteration being obvious.

25. The Daily Record is a running commentary of treatments given and events, much in the manner of a log. It runs in normal sequence, and a patient's name may appear several times in the day as events occur.

26. Miss Salter's informant apparently stated to her that she had had her clothes removed by two male attendants, and had been placed in a cell, and that the two male attendants kept coming back to look in at her. The male attendants who, as mentioned before, are brought specifically from a Male Ward in another building to assist in restraining a violent patient, must return to their own Ward when no longer required. These attendants are in fact on duty in a Male Ward and could not, in any Hospital, be spared from their duties in their own Ward for more than a short period. Furthermore, they are required to check back out at the nursing station of the Female Ward 5A where they entered, and to check in on returning to their own Ward, before resuming their duties.

27. It would not be possible for two male attendants to be at large in the Female Ward 5A and in a position to be coming back and peering into a female patient's room, over any considerable period of time, without both the knowledge and concurrence of the female nursing staff on duty in that Ward. Additionally, unless the staff of their own Ward were prepared to tolerate their absence, they would have to return to their normal duties within a short space of time, or enquiries would be made for them.

28. I have, however, ascertained that it is quite possible that one or more Doctors would look in on a patient who has exhibited severe symptoms, and quite likely that the Doctors would visit and observe a patient who had exhibited symptoms so violent as to require the type of restriction as described by Miss Salter in the article.

29. None the less, there is no record that Miss Salter's informant, who gave the written statement, has ever required this type of restraint. However, another teenager who was in the same Ward at the time that Miss Salter was there, and who associated with Miss Salter's informant, was required to be restrained on one occasion during a previous admission, but not by any means to the extent described, according to the Hospital records.

30. I have, of course, taken into consideration the obvious question as to whether such an incident could occur without the knowledge of the staff. Such an incident could occur, but after careful examination, I am satisfied that it could not occur without the knowledge of responsible staff. I am further satisfied that any complaint made to supervisory staff of such an incident, would have to be investigated.

31. As to such an incident happening without the knowledge of supervisory staff, I can see no way how this could have happened, unless there was a complete conspiracy involving the Professional staff of the Ward of the Hospital. The extent of my investigation was well known to the Hospital staff, who were also aware about the matters of which I was particularly concerned. I cannot accept the possibility that all members of the staff, with their professional background and reputations, would be prepared to co-operate in withholding such information.

32. To sum up this phase, the statement of a former woman patient which is referred to in Miss Salter's article, claims that "one area of a particular ward was reserved for newly-admitted or quite ill patients who were kept there naked, with only a mattress to sleep on." That statement indicates a general procedure, not one isolated incident. I am satisfied that no general procedure of this nature could possibly occur without the connivance of the hospital staff at a professional level.

33. Miss Salter quotes two sources of information, one "a former woman patient," and the other "an attractive blonde high school student." The first patient was the subject of a previous article in the Edmonton Journal in which she is referred to as "well educated and trained in a career." Miss Salter describes her in the same words. I, of course, have no knowledge as to whether Miss Salter interviewed this "former woman patient," or relied on the Journal for her story. As mentioned before, the "attractive blonde high school student," the second informant, has been identified as well as her associate, another teenage girl. There were apparently other younger patients with whom Miss Salter talked.

34. As for the two teenagers mentioned, including Miss Salter's source of information, I have obtained through sources other than the hospital, a very extensive record of their background, their problems, and the incidents and situations which brought them to the hospital as patients, not only on one occasion, but in each case on several occasions. I weighed the value of interviewing them in the public interest, as against the risk of causing further emotional turbulence to them if I did so. In arriving at a decision, I made a

very careful study of information about them which is known to a number of other authorities, and I have studied their family background.

35. After serious consideration, I came to the conclusion that I was not prepared to take the risk of interrogating either of them, and that there was indeed a risk of creating a recurrence of the problems which have plagued these two young women in the past. It is for this reason that I mentioned earlier in this letter, that I understood Mr. Munro's reluctance to supply me with the name of the informant. It is indeed unfortunate that Miss Salter was not aware of the information which I have, before she wrote her article.

36. I can only say, relying on a good many years of practical experience in dealing with human problems, that I could not possibly place any reliance on any stories which these two young women would tell. Particularly could I not place any credence in any story they told, if it were told to me when they were going through one of their recurring behavioural disturbances as was the case when they were in the same Ward with Miss Salter.

37. I do not dispute the fact that both, or either one of them could well tell the truth on numerous occasions, but their history and background is of such a nature, that it would be extremely difficult to distinguish which was the truth and which was not.

38. As I have said previously in this report, my investigation may not have been as absolute as I would like it to have been, had I felt that I could interview Miss Salter's source of information. However, I felt I could do no other than refrain from risking the emotional upset possible from such an interview, in the face of extensive efforts which have been made by several agencies to rehabilitate the two young women referred to.

39. The second major allegation about which I concerned myself, was one where the same "former woman patient" apparently provided information which was published in the Edmonton Journal of May 20, 1967, almost a year earlier. Miss Salter credits the Edmonton Journal with this quotation, which was to the effect that a male alcoholic was put in a side room, and two attendants got a bottle of liquor, poured it under the door, and watched the man lick it up off the floor.

40. I made a thorough inspection of Ward 4B, which is the equivalent of the women's 5A, and where all male alcoholics, who are in a severe condition, are kept under observation.

41. Ward 4B is a Men's Ward, totally occupied by men. The small rooms in which violently disturbed patients must be confined, lead off from a main common room. In this Ward are the most seriously disturbed patients, including some who have exhibited the severest destructive tendencies. There are always a number of male attendants present. All access to this ward is through locked doors. No woman would be permitted into this Ward, and there is, of course, no way in which the "former woman patient" could have seen this incident herself.

42. Should a female manage, by some unknown means, to gain access to that Ward, she would most probably be in a most dangerous position. I am, therefore, satisfied that the story which the "former woman patient" gave to the Edmonton Journal, originated from some other source of information. I suggest that we approach the extremities of hearsay when Miss Salter quotes from the Edmonton Journal, which quotes "a former woman patient" who could not possibly have seen the incident herself, and who must have had some other source of information. This is fourth hand, at least.

43. To illustrate further the hearsay nature of this story, I personally heard it on more than one occasion when I was previously stationed in the Province of Alberta over thirty years ago. I may add that I heard almost the identical story about such incidents in Ontario when I was stationed in that Province. This is an old story which has been going the rounds for many years, and in my view from the information available, cannot be accepted as having any basis in fact that can be confirmed.

44. During my enquiries several persons who claimed to be former patients of the hospital, telephoned my office stating that they had information that they themselves, or others, had been placed in close confinement at the Oliver Hospital. Some other irregularities were suggested. In each case the call was anonymous, and though I offered to accept the information in complete confidence, and in fact made an appointment in one case, the appointment was not kept, and none of the information was ever forthcoming.

45. I am satisfied that the information which Miss Salter has quoted concerning the two matters which I have investigated, cannot, without much stronger corroboration from more reliable sources, constitute an indictment of the Hospital staff. I make it clear that I am now referring to the two incidents which I investigated only, and not to the general administration of the Hospital, which was not the subject of my enquiry. Some of the information which Miss Salter received was hearsay several times removed, and other information which she quoted was received from repeater patients in a mental hospital, and who, it must be remembered, were in an intensive care unit.

46. The weight that can be placed on such testimony, must, of course, be a matter of judgment by the author, who quoted the statements in her article. Miss Salter was required to accept or reject the testimony of the teenager and others who were fellow patients, on her own estimate of their reliability. The incidents which she referred to, were all matters about which she could not have been aware of her own knowledge.

47. Therefore, for the purposes of assessment only, I checked one or two other statements in her article dealing with matters which she herself had seen, and had first hand knowledge. For instance, in describing her first breakfast in Ward 5A, she describes the dining room tables as follows:

> " Though it is late in November, we are herded into a bitterly cold dining room, seated in groups of six at *rough tables made of slabs of board supported on a frame.*"

48. I examined these tables on two separate occasions. My investigator visited the factory where they were made, and I have obtained the complete specifications, including coloured photographs of this type of table from the manufacturer. Let me say flatly, that the tables are not rough boards. They are commercially manufactured, institution-type dining room tables, and their like may be seen in schools and other similar institutions in this Province. The top is maple of considerable thickness, professionally jointed, smoothly polished and finished with lacquer to a high gloss.

49. I examined all the tables in the dining room, and found two or three small cigarette burns as the only serious marring of the tables. The so-called frames, are metal rails and tubular steel legs with a baked enamel finish. The description of the tables given in the article, is just not factual. Incidentally, I obtained the original invoice for the purchase of this furniture which was purchased by the Provincial Government in 1964, almost three years before Miss Salter was admitted to the Ward.

50. Elsewhere in her article, Miss Salter describes the "delicate green cups" used by the staff for coffee, and says, "our own blue plastic cups suddenly seemed rather common." I examined both types of cups in the kitchen in Ward 5A. They are all Melmac ware, of good quality, and the only visible difference is that the patients' are of a blue colour, and those of the staff are green. One would not expect breakable china cups or dishes in a Ward where seriously ill mental patients are living.

51. In the subsequent explanation and answer to the denials of her story made by the Minister of Health of the Province, Miss Salter is quoted in the Edmonton Journal of Wednesday, March 6th, as saying:

> " While I posed as a 'suicidally depressed patient,' I was almost completely ignored by the medical staff, and at no time was any attempt made to uncover the cause of my depression. "

52. Miss Salter was admitted under the name of Jean MacLean on the 16th November at 3:10 p.m., and discharged on the 21st November at 11 a.m. — approximately five days. During that period, according to the hospital records, Miss Salter received clinical and laboratory examinations, including x-rays. Furthermore, the records show that she was supplied with medicines on every day that she was in the hospital, except her last day. Some of these, by her own admission, she flushed down the toilet. In the statements attributed to Miss Salter in the Edmonton Journal, Miss Salter complains that at no time was any attempt made to uncover the cause of her depression. Mental illness does not usually respond to instant therapy, and in her case there were apparently sufficient reasons why the observation period would, and should, take some days.

53. In the first place, according to her story, she entered the hospital with suicidal tendencies. I am informed that at one meal hour, while in a Ward among patients who were seriously disturbed, she deliberately threw her plate of soup on the floor. Such an act might well have triggered a disturbance if other patients had responded, as well could have happened.

54. As Miss Salter's story created considerable public concern, and as she subsequently stated that the name of her informant was available to a responsible official, I felt obligated in the public interest to undertake the investigation which I have done, and to announce publicly through the Press my intention to do so. It is therefore equally necessary in my view, that the public should be made aware of the results of my investigation. I therefore propose to place in the hands of the Edmonton Journal, the Calgary Herald and the Canadian Magazine, copies of this report which I am making to you, after you have had a chance to peruse it.

55. I feel therefore, that I cannot publish full details of the background, character and behavioural problems of the young women who were associated with Miss Salter in Ward 5A. To publicize such details would be to risk creating the very situation which I endeavoured to avoid by finally declining to interview these young women. There is also the risk of their being identified in their present environment. I believe Mr. Ross Munro, Publisher of the Edmonton Journal, shared this concern when he expressed the hope that I would not press for the identity of the young women involved.

56. Under the circumstances, therefore, I can only state that I have, over a period of several months, studied the case histories in various agencies on these sources of information and there exists a record of falsehood, deception, and emotional unrest to a point, where in my considered view, no official and no institution could or should be attacked or criticized on their evidence.

57. I have also, I think, made it clear that my investigations have concerned the hospital on only two aspects of Miss Salter's story where mistreatment of patients was alleged. The general administration of the Alberta Hospitals has been the subject of a special report to the Government; Members of the Legislature visited the Oliver Hospital shortly after the article appeared; the administration of Alberta Hospitals was discussed during the last Session of the Legislature, and I found no reason, or indeed justification, for concerning myself in the general administration of the hospital.

58. I would be grateful if you would bring this report to the attention of the Minister of Health, the Honourable Dr. J. Donovan Ross, and unless there are any matters referred to in my report which you and Dr. Ross specifically wish to discuss, I should like to release this report to the news media as soon as possible, after you have both had an opportunity to study it.

59. May I hear from you at your early convenience?

Yours truly,

Geo. B. McClellan,
Ombudsman,
Province of Alberta.

68-140-1

This complaint was received from a Solicitor representing a rather large trucking firm in the Province of Alberta. This trucking firm has been the object of a considerable number of prosecutions launched by the Highway Inspection Service, and for the most part dealing with alleged overloading of the Company's trucks on various highways.

The real basis of this complaint arose from a charge which was laid against the Trucking Company under Section 69, Subsection 7 of The Public Service Vehicles Act, and which had to do with the overloading of a truck.

In this instance the Company was convicted of the charge by a Magistrate. The Company entered an appeal which was heard before a District Court Judge. The appeal ended with the following decision by the Judge,

> "I find the Appellant not guilty. The Appeal is allowed and the conviction is quashed.
> There will be an Order for a refund forthwith of the fine and costs and for payment out to Counsel for the Appellant of the amount deposited in Court as security for the costs of this Appeal."

The complainant was therefore discharged of all responsibility in connection with this offence.

However the Solicitor for the complainant subsequently received a letter from the Secretary of the Highway Traffic Board in which the Secretary advised that they had received a copy of the conviction report and the appeal report in which the conviction was quashed.

It is pertinent to this complaint to quote from the letter of the Secretary of the Highway Traffic Board to the Solicitor for the Company as follows.

> "It is our understanding that the conviction was quashed on the basis of legal technicalities and aside from legal technicalities the Board is always interested in circumstances surrounding an alleged overload conviction.
>
> Since overload permit privileges are a privilege and not a right, it is of interest to the Board to obtain from the carrier a statement explaining the circumstances of the overload."

There are two further paragraphs and then one of particular interest which says.

> "Whether a conviction has been obtained or not, *is not a primary concern of this Board.* It wishes only to obtain a report from the carrier as to the circumstances of the case, *and from the explanation received a decision is made as to whether the privileges granted to the carrier should be left as they are, withdrawn or restricted.*"

The last sentence of this letter reads as follows.

> "We wish therefore, to obtain from — Truck Service Limited an explanation of the circumstances of the case in question *indicating how much the rear axle was overloaded,* was an attempt made to weigh the unit, and any other information which the carrier may be able to provide."

68-140-1 (Continued)

The complainant's Solicitor was of the opinion that his client was being called upon to submit a report to the Highway Traffic Board on "how much the rear axle was overloaded", in order that the Highway Traffic Board could come to a decision, as to whether his license should or should not be suspended, when an Appeal Court had already decided that the complainant was not guilty of any offence whatsoever. My opinion coincided with that of the Solicitor for the complainant.

As required by The Ombudsman Act I brought the complaint to the attention of the Deputy Minister of the Department of Highways and also to the attention of the Deputy Attorney-General.

I also had some helpful discussion with the Departmental Solicitor for the Department of Highways. I was advised that under the circumstances, the Highway Traffic Board was prepared to let this particular matter drop at this time. However, it was further mentioned that there were six other charges outstanding against the Company, and that when these had been disposed of by the Courts, the file would again be reviewed by the Highway Traffic Board.

I felt that the Board would, of course, have been perfectly justified in reviewing any additional convictions which may have occurred following the particular one which is mentioned.

I was therefore somewhat surprised to learn in due course, that the six charges had all been disposed of by the Courts or otherwise before the Solicitor for the complainant had written me his original letter. In other words, there were not six outstanding charges resulting from offences committed since the complainant's Solicitor had written me, as I had been led to believe. There were in fact no outstanding charges against the complainant, and the six charges referred to had all been disposed of before the complaint came to my attention as follows.

> Three of the charges dealt with overloads and one of them was dismissed. Conviction was obtained on the other two. Three charges had to do with inadequate registration Certificates which had nothing to do with the particular complaint in question, and of these, two had registered convictions and in one case, the charge had not even been laid.

The situation was therefore, that at the time I received the complaint from the Solicitor for the complainant, there were no outstanding charges against him.

I therefore took the view that, if at this particular stage the Highway Traffic Board, were to take steps to suspend the complainant's license, or otherwise to discipline him, it could be argued, that despite his successful appeal, other means were being taken to bring him to book.

The Solicitor for the Department of Highways was most co-operative in providing me with the background of various cases in endeavouring to straighten out the obvious misconceptions and confusion which had occurred. He agreed to put my views before the Board and I was subsequently advised that the Board had decided that no suspension, restriction or any other penalty would be applied to the trucking firm of the complainant. This decision had been taken following a meeting between the Board and the Solicitor for the complainant, and so far as my Office was concerned, the case was therefore completely rectified.

68-140-1 (Continued)

I think it is only fair to comment that the Inspection Service had quite obviously been deeply concerned over a considerable length of time, with the activities of this particular Trucking Firm in so far as "overload" is concerned. I am aware that the Inspection Service has a very large area to cover, and that there are those who are always prepared to breach the Regulations when an opportunity presents itself to do so. I am not unfamiliar with the problems which face the members of the Inspection Service in their duties. Unfortunately for the Inspection Service, it would appear that knowledge of successful prosecutions instituted by the Inspection Service does not always reach the Highway Traffic Board with sufficient celerity and accuracy to be a factor in that Board's deliberations. I might also add that some discomforture can be expected when Civil Servants endeavour to second-guess the Appeal Courts.

68-140-9

The complainant in this case and her husband, a retired farmer, had been operating a small country store and gas station for approximately twelve years. The highway on which the store was situated had for many years been the only highway for through traffic and also for local traffic. The complaint was to the effect, that the Department of Highways some two years ago had moved that portion of the highway which passed the store owned by the complainant and her husband, a distance of approximately two miles despite the protests of the husband. The complaint alleged that as a result of lack of traffic, the business of the store had fallen off to a point, where it could no longer support the complainant and her husband. She also claimed that they were unable to sell the business due to the loss of revenue brought about by the removal of the section of the highway. It was her view that her husband should receive an unspecified amount of compensation from the Government of the Province for the loss of his business. Her distress was understandable when she mentioned that her husband was then 69 years of age, and that it was too late for them to start out in a new venture.

The investigation of this complaint took some considerable time due to the fact that there were approximately 200 complaints, either under investigation, or awaiting investigation, at the time this one was received. The complainant expressed her impatience in a further letter, although she had been advised in writing of the large backlog of complaints, and the fact that it would take some considerable time to deal with her complaint. I merely mention this to show how seriously disturbed this complainant was for her husband's future.

I advised the Deputy Minister of Highways of this complaint and received full and ready co-operation in carrying out an investigation. I was provided with the Chief Engineer's reports of the survey which had been made and upon which the recommendation had been based, to realign the highway as was subsequently done. I was fortunate also in having personal knowledge of the store, the highway and the road conditions generally in the area. Indeed I had driven that highway in all conditions of weather over a period of almost three years, some thirty-five years ago. I had also travelled it on a number of occasions between 1956 and 1959.

The recommendations which resulted in the change of the highway were, to me, completely sound and in keeping with the requirements for a through arterial highway, upon which through travellers have a right to expect to be able to maintain a sustained rate of speed, without having to face sudden sharp turns or unexpected slow-down areas.

The old highway had, as mentioned before, a number of such sharp turns. There was a school on it, adjacent to the highway which would have created a slow-down zone, and would still have created a serious accident hazard to young children proceeding to school either by bus or by cycle, or on foot. The new route meant a saving of approximately a quarter of a million dollars in construction and maintenance. The proposed new route had a minimum of muskeg areas with ample "borrow material" handy. The old highway in the near vicinity to the store in question, passed through muskeg areas, and having spent a number of nights on the old highway hub deep, and unable to move, I can personally testify to this fact.

There were a number of other reasons given in the survey, all of which were quite reasonable, and included such items as the cost of moving pole lines

68-140-9 (Continued)

on the old highway, the additional cost brought about by widening the road, and the possible acquisition of developed private property. The major reason in my view, was the requirement to eliminate the sharp turns which existed on the old highway and to provide a new portion of the highway with length of vision and gradual curves. The development and expansion of new areas far beyond the particular area with which this complaint is concerned, made it essential that a through arterial highway be provided for the increasing volume of through traffic. There was therefore, in my view, every justification for the decision taken, and I should add, that I learned that the Minister of Highways himself had attended a public meeting in the area and after explaining the requirements for the highway received a public endorsation to proceed.

While I had every sympathy for the complainant and the problems which she and her husband faced, I was obliged to write her, and tell her that I could not criticize the decision which had been taken to construct the highway in the manner in which it had been done. As to compensation, I was obliged to tell her that I could not support the view that the Government had an obligation in such cases, to compensate for losses in private business, which resulted from the development of our country along the lines of the greatest good for the greatest number.

I am satisfied that I did not succeed in convincing her, but I did point out that, to extend her point of view throughout the Province, would be to advance the proposition, that when the present Edmonton-Calgary Trail ceased to proceed directly through almost all the Towns and Cities between Edmonton and Calgary, there would have been an obligation upon the Government to compensate all the merchants, in all of those Towns and Cities, for whatever business they might have lost, due to the re-routing of the main highway. Such a program would, of course, be financially impossible for any Government. No such type of compensation has ever been considered as a real possibility on this continent.

Under the free enterprise system, he who ventures into business must accept the risks which accompany his venture.

I have great sympathy for this complainant and her husband, who face this personal catastrophe in their later years. Like Canute however, I have no power or will to stem the advancing tide of development into the far reaches of our Province.

68-160-2

The complainant wrote to me while serving a sentence in a Provincial Gaol.

He had been, according to his own story, an instructor in a School of Bridge and in fact was participating in a Bridge Tournament in a Hotel at the time of his arrest. I hasten to add that the crimes with which he was charged were in no way a reflection on his skill, either as a bridge player or as an instructor. He was convicted and sentenced to a term of imprisonment.

He felt that he had a claim for wages against his former employers, the managers of the Bridge Studio. He stated that he had placed a claim through the Department of Labour and that he had also been in touch with his M.L.A.

As I was unaware of just where the matter stood, I communicated with the Deputy Minister of Labour who advised me that he had asked the Vice-Chairman of the Board of Industrial Relations for a report.

Within a very reasonable period of time I was advised of the efforts being made by the Industrial Relations Board to effect settlement of the wage dispute between this man and his former employers. There were some complications, of which I was kept advised, and very obviously the Industrial Relations Board was making every effort to obtain a fair and just settlement for the complainant.

During this period he was released from Gaol having served his sentence and moved to another Province.

In due course I was advised by the Deputy Minister of Labour that the Board had been successful in obtaining a financial offer from the former employers of the complainant, which they and I considered entirely satisfactory. The amount in question had been received by the Board, and arrangements had been made to forward the sum by a Provincial Treasurer's cheque to the complainant. I was also advised that the complainant had endorsed a Release Form accepting the amount in question as a full and binding settlement.

I then wrote the complainant at the Hotel address in the other Province which I had been given, advising him of the information which I had received, and asking him to confirm that he had received the amount, so that I might conclude my file. I received no reply to my letter, and indeed the letter was returned to me due to the complainant having checked out of the Hotel leaving no forwarding address.

I therefore asked the Department of Labour to obtain a photocopy of the endorsed cheque so that I might conclude my file without the usual letter of acknowledgment from the complainant. In due course such a photocopy was received and placed on my file.

I received no further word from the complainant and therefore concluded my file as rectified.

I was much impressed by the very ready co-operation received from the Industrial Relations Board and Deputy Minister of Labour and by the very quick and effective manner in which this complaint was brought to a successful conclusion. While the complaint has been rectified, this does not in any way suggest that the Industrial Relations Board was at fault.

68-330-11

The complainant in this case had been a female patient in an Alberta Mental Hospital on three occasions. At the time of her complaint she had been transferred from a Mental Hospital to a Nursing Home where she was residing.

Her complaint to me was that the Public Trustee maintained full control of her estate and that she herself was mentally healthy and quite capable of managing her own affairs.

Investigation revealed that there had been ample medical evidence of mental illness on the three occasions in which she had been certified.

On the last occasion there had been some response to treatment and eventually by an arrangement with which she agreed, she was released from the Hospital and took up residence in the Nursing Home, which is also understood to be a Senior Citizens Lodge. The Hospital therefore having discharged her, had no actual further control over her. However in view of her problems, the Public Trustee had retained control of her estate. I also ascertained that her M.L.A. had made representations on her behalf.

Both the Public Trustee and the Mental Health Branch of the Department of Health advised me that, if the usual Medical Certificates of competency were submitted to them by Doctors in the area in which she lived, the control of her estate would be released to her.

Such Medical Certificates were in due course forwarded to the Public Trustee and to the Medical Superintendent of the Alberta Mental Hospital in which she had formally been a patient. The latter agreed that she was now capable of managing her own affairs and I was therefore advised that the Public Trustee had released control of her estate.

I then advised the complainant in writing of the developments and closed my file showing the complaint as rectified.

68-210-1

The complainant in this case was a married woman with three small children, who was living apart from her husband. The day before she wrote to me her youngest child had died.

Her complaint had to do with the amount of welfare she was receiving which she considered completely inadequate for herself and her family.

The letter I received indicated that the woman who wrote it was obviously distraught, and I immediately, by telephone, placed the complaint before the Department of Public Welfare. I was advised that the matter would be looked into at once and was also assured that arrangements for the funeral and burial of the deceased child would be borne by public funds.

In due course I received a very extensive and adequate explanation from the Department as to the complete financial situation of this woman and her family, and I was also advised that the increase in the cost of living would bring about an increase in Social Allowances for this family within the next month or two. A Social Worker had visited the home and kept in touch since my original phone call to the Department, and there was every reason to believe that the family was receiving the maximum Social Allowance which can be authorized under the existing law.

I again communicated by letter with the complainant approximately six months after the original complaint, and after having checked again with the Department as to the present standing of the case. I advised her that I was closing my file but only on the assumption that the complaint had been settled to her satisfaction and that no further intervention from my office was required.

I received no reply. The letter was not delivered due to a change of address to an unknown destination. We located the complainant's new address and readdressed the letter to her at her new address.

The Department having moved quickly to look into this very sad case, the file has been concluded and the complaint shown as "Rectified".

DEPARTMENT OF WELFARE (CHILD WELFARE BRANCH)

68-210-14

The complainant who is a married woman, protested a decision by the Child Welfare Branch of the Department of Welfare to remove from her care two female foster children aged respectively twelve and sixteen at that time, and to return them to another Province. They were wards of the other Province. The complainant had accepted them while a resident of that Province, and as a married woman with six children of her own. The two foster children had been received in her home while infants of only a few weeks, and she was the only mother they had ever known.

The complainant had been widowed in the Province in which she lived. Her own children had grown up and left home. She married an Alberta widower with children of his own and came to this Province bringing with her the two foster daughters referred to, and an additional foster son, who does not enter into this complaint.

The complaint which was made in May, 1968, alleged that a day or two before, the youngest foster daughter had had a minor quarrel with another child over twenty-five cents, which had been found in the street. The complainant had endeavoured to settle the dispute and had had a quarrel with her younger foster child. There was some indication the child would be punished as a result, and the child ran out of the house and to a neighbour's where she contacted an officer of the Alberta Child Welfare Branch.

The complainant further alleged that an officer of the Child Welfare Branch had picked the child up that evening and placed her in another foster home. The complainant stated, that she had not been notified that evening of the decision which had been taken and acted upon, and it was not until she herself got in touch with the Child Welfare Branch that she found out what had happened to the child. I later verified, that she had indeed not been advised of the placing of the child in another foster home, until she herself had made contact with the Child Welfare Branch.

She claimed that she had been greatly distressed when the child did not come home and had been looking for her in several places before she had phoned the Child Welfare Branch.

The following day she and her husband appeared at the Child Welfare Branch Offices where they were advised that both foster children were to be removed from her care, and to be returned to the Province from whence they had come, and of which they were wards. I was later advised that the complainant had become very abusive upon receipt of this news, and she did not in any way deny that she had made some very strong statements indeed. Considering that she had been the only mother these girls had known since they were infants of a very few weeks, her feelings are understandable.

Investigation carried out by my Office revealed that the Social Worker had recommended the return of the two girls to the Province of which they were wards, as early as mid-January, 1968. A decision had been made by the Department of Child Welfare to remove the children from their foster home and to return them to the care of the Department of Child Welfare in the other Province. There is a reciprocal arrangement between Provinces by which the wards of one Province resident in another, are supervised by the Child Welfare Branch of the Province in which they are residing.

68-210-14 (Continued)

Acceptance of the proposal by the Child Welfare Branch of the other Province had been received before the end of April, 1968, and authority for their immediate transfer to the other Province. They were to be placed in an institution until foster homes could be found for them.

The Alberta Child Welfare Branch had decided not to move the children to the other Province, until they had completed their school year in June, but at no time had the foster mother been advised of the decision taken by the authorities. She stated in her complaint to me, that on the evening of the day that the youngest child ran away, she eventually located her at the house where the child was placed, and she stated that the family, who were then in temporary custody of the child, had told her that, not only this child, but the older daughter were to be returned to their home Province. She stated that she telephoned the Department in the capital City of the other Province, but could get no confirmation of the story. At the time she complained to me, the child had already run away from the temporary home and returned to her. The temporary custodians had come and removed the child from the foster mother's home after that incident.

On commencing my investigation, I ascertained that arrangements had been made by the Child Welfare Branch to send the two foster children back to their home Province on July 3rd, 1968. I immediately sought, and obtained, the co-operation of the then Director of Child Welfare, in deferring any such departure until my investigation was concluded.

Investigation carried out by my Office revealed that when the complainant had married her second husband and come to Alberta, she had married into a family with which the Department of Welfare had been required to deal for a number of years. The family of her second husband had been the cause of considerable and justified concern to the Child Welfare Branch. That Branch had expended a great deal of time and effort on several of the children of that family. The results had been most disheartening. The complainant upon marrying into this family had, so far as could be ascertained, done her very best to reverse the trend that had developed before she came into the picture. Her efforts were not crowned with success, a situation which she shared with the Social Workers of the Department of Welfare.

The concern of the Child Welfare Branch at the entry into this family of the foster children, upon the marriage of their mother to her second husband, is completely understandable, when the background is known. The influences which might be brought to bear on the foster daughters were such as to create some considerable apprehension on the part of the Child Welfare Branch. I am satisfied that the decision to remove the children and return them to the Province from whence they had come, was, for the mosts part, based on such apprehension.

The situation was further complicated by the fact that the foster mother, her husband, his family and in part at least, the two foster daughters are of an unmistakable minority race, which regrettably, does not yet share equally in the opportunities provided by our Society.

Criticism against the foster parents appeared on the files of the Child Welfare Branch, to the effect that they had concealed certain information concerning their financial affairs which the Department had legitimate right to know. The family for instance, were in receipt of Social Allowance, and it was alleged that the foster mother had concealed the fact that she had worked as a domestic. The husband has back trouble and was unemployed.

68-210-14 (Continued)

It was further quite correctly reported in the Departmental files, that the foster parents were purchasing a modest home which they had indicated to the Department they were renting.

The concern of the officials of the Department for these delinquencies is understandable and the officers of the Department must be guided by the provisions of the Act and Regulations under which they work.

The reasons for such concealment, however, are more understandable, when one hears the reason for them, as explained to the Investigator for the Ombudsman's Office by the complainant. She explained the prejudices which faced them every time they tried to rent a house, and which finally led to the decision to try to buy a home, and avoid the acid of further discrimination. The payments for the home created the need for some income beyond Social Allowances, so the complainant went to work.

My investigation was directed along two main lines. One was directed to learning just how the children felt about their foster mother and their home, and what their own wishes were in regard to their proposed return to another Province. The second was to endeavour to assess their opportunities to become mature, well adjusted, and educated adults, in their foster home, as compared to the likelihood of their reaching a similar situation, after being abruptly moved at the age of almost seventeen and the age of twelve, from the only home that they had ever known.

The investigation revealed that the balance of the family of the foster father no longer lived at home and that the two foster daughters were the only children then resident in the house. The influence therefore which the Social Workers feared was no longer in the home. My opinion was not shared entirely by the Social Workers who felt that the visits to the home of former members of the family might have a bad effect. I was, however, encouraged by the fact that neither the foster father himself nor the foster mother had ever been in any difficulty whatsoever with the authorities. Even more important, neither of the foster children had ever been in any trouble whatsoever.

A Social Worker from the Child Welfare Branch, and an Investigator from my Office carried out much of the inquiry together. My Investigator was thus able to benefit from the professional experience of the Social Worker, and questions on the matters which concerned both the Department and my Office were asked, and the answers heard together.

The view of the officers of the Department had been that the children at different times had indicated their willingness to be returned to the other Province. One report indicates that one of them at least was looking forward to it. The older girl, however had one major concern; — that she not be separated from the younger.

Both of the girls in talking to my Investigator were vehement in their desire to remain with their foster mother. The older girl indicated that if removed from home she would run away and seek employment. She became seventeen before the investigation was completed, and could well have carried out her stated intention. The younger girl indicated her deep regret, at what she felt had resulted from her quarrel with her foster mother. I can understand that in a moment of pique a child might well state an intention to leave home, or a desire to leave home. However the Investigator from my Office could find nothing but a whole-hearted desire to remain with the woman whom they regard as their mother.

I was so concerned with this aspect of the investigation that I myself talked with both the girls in the presence of their foster parents, and left them with as many openings as I could, to reveal any hidden animosity against their foster mother. I could find none.

The children were well nourished and in excellent health. Their home was modest but comfortable. There was ample food in the house and they were obviously being well cared for. The Principals of both schools which the girls attended, were interviewed. The girls are progressing satisfactorily in their school work. Their attendance record is excellent, in fact the older girl had the best attendance record in the class. The Principal of one school had met the foster mother, and was very much impressed by her, and by her desire and efforts to see the children succeed. The older girl has a target for a profession in which she wishes to engage. The Principal felt that she had a very good chance indeed of seeing her wish come true. Both children were reported as being well adjusted and popular among their classmates. Their record at school was therefore entirely satisfactory.

The mother's record over a number of years has been one of love for children; her own and those of others. She has raised her own family, and has raised these two girls for over seventeen and twelve years respectively. To do this she has had to work hard and to make sacrifices. She has also had to overcome prejudice.

Inquiries also indicated that both girls would have to be placed in an institution, at least temporarily, upon arrival in their native Province. No other foster homes had yet been found for them in that Province. There was therefore no guarantee whatsovever that they might not have to be separated, if foster homes were found for them.

The probable traumatic effects of such an upheaval on the future lives of these young girls was a major factor in the formation of my eventual conclusions. The prospects of benefit were invisible. The probabilities of catastrophe were magnificent.

An interview was arranged with the new Director of the Child Welfare Branch. He had only been in office a day or two, and it was during this introductory period to his new Department, that I interviewed him, and placed this problem and my views before him and his staff.

After a most useful discussion, I expressed my view that the children should be allowed to remain with their foster mother, and the proposed removal to another Province should be cancelled. The aura of influence which had concerned the Child Welfare Branch was no longer present as part of the family. There was no evidence that either of the children had been affected or had come to harm. There was much evidence of the mother's efforts to make a home and to provide a future for these children. There was evidence of love, affection and concern on both sides. The children had expressed, over and over, their desire to remain with their foster mother. In my view the present situation should be given an opportunity to work, subject of course to review if the situation deteriorates.

The Director, quite understandably, took a few days to consider the situation. He advised me a short time later that a decision had been made not to proceed with the removal of the children from the family, and that they would remain with their foster mother provided the situation did not deteriorate. The Director had some views as to the future education of the children, and it was

68-210-14 (Continued)

agreed that these would be discussed by an Investigator from my Office and a Social Worker jointly with the parents. This was done. I myself had an interview with the parents and the girls and added my advice to what other burdens they have to bear.

In December, the foster mother was contacted and, as far as could be ascertained, things are going quite well. The girls are progressing satisfactorily at school. The foster mother has given up her employment and is now at home full time where she is looking after her family and nursing her husband who has recently been in the hospital.

The file has now been concluded and the complaint shown as Rectified.

DEPARTMENT OF PUBLIC WORKS

68-220-3

There were three complainants in this case who were represented by a firm of Solicitors, which firm directed the complaint to the Ombudsman's Office.

The complainants had been employed by a sub-contractor to a major contractor in the construction of a Provincial Building. Each complainant had a claim involving a non-payment for work and labour whilst employed by the sub-contractor.

The Solicitors representing the three complainants had made claim to the Department of Public Works, requesting that Department to take action to have the claims settled as provided for in the Public Works Act.* The appropriate Sections of the Public Works Act are designed so that a workman, who is not paid while involved in construction for the Provincial Government can file a claim with the Department of Public Works, and can receive payment expeditiously.

The Solicitors for the complainants advised the Ombudsman's Office that they had written the Department of Public Works five times in a period of approximately three months, but had not been able to achieve a settlement of their client's claims. I directed an inquiry to the Department of Public Works, requesting to be advised as to what action had been taken in connection with this claim. In due course I received a report from the Department of Public Works, indicating that the delay which had occurred in settling these accounts was due to the fact that not all of the money claimed had been earned by the complainant in working on the particular Provincial Building. It had been necessary to carry out inquiries as to just how much money was owing to the complainants for the work which they had actually performed on the Provincial Building. When this was accomplished, the sum in each case was somewhat less than the original claim. This is not to say that the original claim was not justified, but the amounts which were now worked out, were all, for which the Department of Public Works could legitimately take action to recover under those portions of the Act referred to. The complainants would have to take other means to recover the balance.

Approximately five weeks after receiving the original complaint, I was advised by the Department of Public Works that the principal contractor had made settlement with the Solicitors representing the three complainants for the lesser amounts.

I then communicated with the Solicitors for the complainants asking them if satisfactory settlement had been achieved, and I received a reply, that while their clients were not fully satisfied with the amounts received, the Solicitors were aware that the matter of the balance of the claims was being dealt with by other means. The letter which I received from the Solicitors also stated that they felt that there was nothing further that my Office could do in connection with the matter, and expressed their thanks for the action taken. The complaint was therefore recorded as rectified.

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* Sections 14 and 15
Public Works Act, Chapter 78
Statutes of Alberta 1965

68-300-15

The complainant in this case, is the widow of a workman who was killed in an industrial accident. Her complaint to me dealt with more than one issue.

The two separate issues which I felt dealt with matters in which the Board was concerned, both related to the extent of the money she had received, and expected to receive as a result of the accident in question.

She complained about the distribution of the proceeds of the legal action commenced through the subrogation rights of the Board, and the widow's pension awarded to her. Her complaint alleged that her deceased husband left no estate whatsoever, and for that reason she was totally dependent upon the compensation received from the Board.

The Board had directed legal proceedings against the responsible third party, resulting in a total gross recovery by the Board, in the sum of $9,000.00.

The Board distributed the proceeds received, in accordance with Section 24(8) of the Workmen's Compensation Act. In so doing, the Board paid to the deceased workman's dependents, namely the surviving widow and child, the sum of $2,250.00. The Board also paid the legal costs out of the $6,750.00 which remained.

I satisfied myself that this distribution by the Board, out of the total recovery, was in accordance with the Act, and quite proper. I was obliged to advise the complainant that her complaint against the Board was accordingly, "Not Justified."

As to the second issue, the Workmen's Compensation Act provides, in Section 33(1)(d), that where death results from the injury, the amount of compensation to a dependent widow shall be a monthly payment of $85.00. The complainant received this sum, at least since the Workmen's Compensation Act was amended on April 1, 1965. Prior to that date she had been receiving the previous statutory maximum monthly sum of $75.00.

It would seem to me that the amount of the surviving widow's pension, is independent of whether or not any third party liability is established, and ultimate recovery achieved. The monthly pension will continue during the complainant's lifetime, unless she remarries. In that case, the Workmen's Compensation Act would require that the pension cease, but she would be paid as an alternative a designated sum of $1,020.

The complainant has pointed out that $85.00 per month is not sufficient to provide her with room, board, clothing and medical assistance. She has had some employment from which the returns are undoubtedly quite small, and there can be no doubt that she is having a difficult time.

However, the Board is, of course, bound by the Workmen's Compensation Act, and in this case it had followed the Act quite properly.

I could not find that the complainant had been deprived of anything to which she was entitled by the terms of the Workmen's Compensation Act. Indeed, it might be mentioned that the Board's final submission to me on this file, pointed out that the cost to the Board, including the capitalized value of the pension, exceeded the sum of $15,000.00, while the gross recovery of the Board from the third party, amounted to $9,000.00.

68-300-15 (Continued)

These are always difficult cases to deal with, particularly where people are in straitened circumstances, and cannot understand the stand which the Board must take, that it cannot go beyond the restrictions of the Act which govern the work of the Board.

I therefore advised the complainant and the Board that the complaint was "Not Justified" for the reasons explained herein.

68-300-16

The complainant was injured by a circular power saw, used in connection with his employment. He complained to the Ombudsman that the saw was not equipped with a safety guard.

Enquiries at the Workmen's Compensation Board revealed that the complainant was employed by a mink rancher. Such an occupation is not considered an industry which comes compulsorily under the Workmen's Compensation Act. Additionally, the complainant's employer did not make special application for such coverage.

I therefore reached the opinion that the complaint against the Board was "Not Justified." However, considering the circumstances, I suggested to the complainant that he consider seeking the advice of a solicitor in private practice as to his legal position regarding the accident itself.

68-300-21

The complainant brought his complaint to my attention after his claim for compensation was rejected by the Workmen's Compensation Board. It seems that, following an investigation, the Board was satisfied that the evidence did not establish that an accident had occurred, arising out of and in the course of employment.

There was also some conflict of evidence as to whether or not the complainant reported the accident to his employer within a reasonable period of time. He insists that he orally reported the accident to his employer's Nursing Office, and at the time was given some medication to relieve his back pain. Subsequently he complained in writing to the Alberta Association of Registered Nurses about alleged errors made by his employer's Nursing staff. According to the complainant, this latter complaint resulted in the termination of his employment.

The Workmen's Compensation Act provides for the respective responsibilities regarding the point of reporting of an accident.*

The workman is required to give notice to the employer as soon as practicable after the happening of the accident. Such notice is required to include the name and address of the workman and is sufficient, if it states in ordinary language the cause of the injury and where the accident happened.

The employer on the other hand is required to notify the Workmen's Compensation Board within a twenty-four hour period, after the accident comes to his knowledge. There are penalties authorized by the Act if the employer fails to report within the statutory period.

The complainant was later advised by the Board in a letter dated April 16th, 1968, that his claim was rejected, because the alleged accident was not established to the Board's satisfaction, and also because of his statutory failure to report the accident to his employer as soon as practicable after it was stated to have occurred. Incidentally the employer's Nurse admits being visited by the complainant, but states that he had not even reported orally, as alleged, that an accident had occurred.

I satisfied myself that there was no corroborative evidence before the Board substantiating the complainant's submission that an accident had occurred arising out of, and in connection with his employment. Nevertheless the complainant had not been given an opportunity to face the witnesses against him or to examine the evidence received by the Board. Statements had been obtained from those individuals suggested by the complainant, but he had not been advised as to the contents of such statements.

During my investigation the Board volunteered its willingness to convene a hearing to hear all material evidence. An official of the Board wrote to the complainant on September 18th, 1968 in which he summarized the Board's position in part as follows:

> "If you wish to apply to have your claim reviewed by the Board, please advise us. This may involve a formal hearing before the Board, at which time the evidence from all witnesses and interested parties would be heard."

As the complainant was now provided with this further avenue of appeal, apart from my intervention, I accordingly "Declined" to continue the investiga-

* The Workmen's Compensation Act
Section 25

tion further and closed my file, as I must do under the provisions of the Ombudsman Act. I advised the complainant however, that he could again submit his complaint to me after he had completed the appeals now available to him, and provided of course that he had not received satisfaction.

Subsequently I was advised by the Board that a hearing had been requested, and with the exception of one medical witness, all witnesses were heard on November 1st, 1968. The hearing will apparently be reconvened at a later time convenient to this remaining witness and to the complainant.

68-300-22

The complainant in this case, who is now in his 84th year, is a veteran of World War I, and a veteran of 13 years service in the former Alberta Provincial Police. He sustained an accident in the course of his duties, by being thrown from a horse, and his injuries were such that application was made for compensation to the Workmen's Compensation Board. The accident happened more than forty years ago.

The Board concluded that the injuries sustained amounted to a disability equivalent to 25 per cent of total, and awarded a pension for life in the sum of $22.22. This would indicate that his salary at that time was approximately $89.00 per month.

My enquiries revealed that the Board does not have any authority to increase such a pension, because of the increased cost of living, since the time that the pension was initially established.

If a subsequent Medical Board had decided that his injuries had increased to 50 per cent, or something of that sort, then, of course, the pension would increase to 50 per cent of his salary at the time of the accident. But as I mentioned before, as long as it remains at 25 per cent, the Board has no authority whatsoever to increase the pension, purely because of increased cost of living.

Under the circumstances I was obliged to decline to continue the investigation, until the complainant has availed himself, or otherwise, of an appeal under Section 27, or there is a general increase in rates.

This particular complaint, however, is indicative of the fate which befalls a pensioner, who has been inconsiderate enough to arrive at a ripe old age. This particular problem is not peculiar to the provisions of the Workmen's Compensation Act. Pensioners who have received pensions from a number of other schemes, are in exactly the same position, including all the pensioners from the Federal Civil Service, and so far as I know, most of the Provincial Civil Services.

As mentioned above, the complainant is in receipt of a pension of $22.22 per month, based on a 25 per cent disability. If he were today, retired on a 25 per cent disability pension, and had been occupying his same rank in the police force which polices the Province today, namely the Royal Canadian Mounted Police, his 25 per cent disability pension would amount to approximately $170.75. per month.

68-300-28

The complainant in this case apparently lost thirteen days of work as a result of respiratory difficulties. According to his information, ammonia fumes were present in the hog barn where he was working. He made application to the Workmen's Compensation Board for compensation and it was declined. He then complained to the Ombudsman.

During my investigation the Board notified the complainant that, after further consideration, compensation would be paid to him for the thirteen days that he was off work.

I wrote to the complainant on August 26th, 1968, summarizing my understanding of this settlement. I indicated that I would assume that he was satisfied with the settlement, if I did not hear from him within a month's time. I have heard nothing further from him and I have accordingly marked this complaint as "Rectified".

68-300-33

The complainant had a number of hernia operations authorized by the Workmen's Compensation Board, the last one being in August of 1967. Following his last operation, he was paid compensation until October, 1967, which period exceeded by a short time, the time required for a normal recovery from such an operation.

The complaint which I received from the complainant suggested that the Board had received some evidence to support this injured workman, but refused to be bound by it. Furthermore, the complainant stated that he had written a letter to the Board, advising that his Doctor did not tell him to return to work, and that he accordingly stayed off work until April, 1968, feeling that he was complying with his Doctor's instructions.

The investigation revealed that no medical review was held under Section 27 of the Workmen's Compensation Act. The complainant was, of course, entitled to such a review. However, the Board, during the investigation, further reviewed their files, and the situation, and considering all the circumstances, authorized that further compensation be paid from October 1967 to a date in April, 1968. Payment was accordingly sent to the workman on September 27th, 1968.

The medical reports regarding the complainant's condition, indicate that it might be desirable for him to find lighter employment. I have been assured that one of the Rehabilitation Officers employed by the Workmen's Compensation Board, has been in touch with this complainant on several occasions, and will continue efforts to assist him in this regard.

I have also noted that the Board contacted the workman's personal physician in March, 1968, and advised him that further surgery would be authorized, if required, and the workman agreed. It was also noted that in that event, the Board was prepared to reinstate full compensation from the date of his admission to the hospital for surgery.

As this complaint had been most adequately rectified, the file was concluded.

WORKMEN'S COMPENSATION BOARD

68-300-37

This complaint related to the extent of compensation paid by the Board, following a recovery by the Board from the responsible third party. In accordance with the Workmen's Compensation Act*, the complainant was paid twenty-five percent of the gross recovery received by the Board from the responsible third party.

Additionally the Board awarded the complainant a permanent monthly pension in the sum of $12.44.

The complainant made application to the Board for the payment to him of a sum equivalent to firstly, the capitalized value of the permanent pension of $12.44 per month, and secondly of the balance of the Board's recovery less the Board's costs. His application was declined and the complainant brought the matter to the attention of the Ombudsman.

During my investigation the Board agreed to the complainant's request. Upon signing the usual releases, the commuted value of the pension amounting to $2,130.35, together with the balance of the recovery, equivalent to $2,526.30, was paid to the complainant.

Upon notification that the complaint had been so "Rectified" I ceased my investigation and closed my file as concluded.

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* The Workmen's Compensation Act
Section 24 (8)(c)

WORKMEN'S COMPENSATION BOARD

68-300-54

This complaint against the Workmen's Compensation Board is different from most of those which have been received, in that it does not involve some injury. The complainant is protesting the fact that the Workmen's Compensation Board has declined to approve certain equipment used at a construction site, alleging it to have defective safety features.

The Ombudsman, in this case, was only one of a number of avenues of appeal which the complainant approached, more or less at the same time, including complaints made to Members of the Legislature.

Under the circumstances, inasmuch as the complainant had not yet exhausted the several avenues of review which were available to him, and which he had already approached, I felt that I must decline to continue the investigation, but I advised him that I would be prepared to open the file for investigation at least, if he did not obtain satisfaction elsewhere.

68-300-70

The complainant was involved in an accident in late 1965, resulting in an injury to her right shoulder. She does not feel that she has had a satisfactory settlement by the Workmen's Compensation Board, and she complained to the Ombudsman. She submitted a rather voluminous file of information in support of her complaint. This file indicated that she had sought assistance from several sources, including two Members of Parliament.

My initial investigation established that the complainant had not been granted a medical review pursuant to Section 27 of the Workmen's Compensation Act. When I found that this channel of appeal or review was still available to her, and she had not yet taken advantage of it, I was therefore required to "Decline" to continue the investigation, in accordance with the provisions of The Ombudsman Act.*

I have, however, advised the complainant in writing, that such a medical review might result in any previously awarded pension being raised, maintained at the same level, reduced, or even cancelled, as described in the body of this report.

I could not, of course, recommend to her what steps she should take, but I have suggested that she discuss the matter thoroughly with her family physician, and I have advised her, that if she is unsuccessful in her appeal, she may reapply to me for a further investigation of her case.

* Section 12(1)(a)

COMPLAINTS AGAINST FEDERAL DEPARTMENTS OR AGENCIES

68-410-19

The complainant in writing referred me to a Federal Statute, namely The Medical Care Act, Chapter 64.

The complainant and his associates questioned the constitutionality of the Act, as being beyond the Legislative authority of the Federal Government. The complainant on behalf of himself and his associates, requested the interest and services of my Office in connection with implementing Section 3 of The Constitutional Questions Act, Chapter 55, Revised Statutes of Alberta, 1955. The latter mentioned Act authorizes the Lieutenant-Governor-in-Council to obtain an opinion from the Supreme Court of the Province on the constitutionality of Legislation.

I was also advised that a request had been made to the Premier, the Honourable E. C. Manning, to initiate an action under Section 3 of The Constitutional Questions Act, to determine the constitutionality of the Medical Care Act. The Premier had declined to take this action, for reasons which are no concern of the Office of the Ombudsman. It was the intent of this complaint, as I interpreted it, that I should endeavour to induce the Premier to reconsider his decision.

It is quite obvious from The Ombudsman Act of Alberta, that I had no authority whatsoever to criticize the Medical Care Act itself, in as much as it was a piece of Federal Government Legislation. In so far as the Provincial Legislation was concerned, namely The Constitutional Questions Act, it would require the authority of the Lieutenant-Governor-in-Council to place the Federal Act before the Supreme Court. No such jurisdiction is provided to the Ombudsman in the Ombudsman Act. Additionally the decision on not to take the action requested had been made by a Minister of the Crown, indeed the First Minister of the Crown in the Province.

The Ombudsman Act provides that the Ombudsman may criticize recommendations made to a Minister. It does not provide that the Ombudsman may criticize a decision made by a Minister. I could not find that I had any jurisdiction whatsoever to take any action in connection with this complaint, and I so advised the complainant in writing, and closed the file as having "No Jurisdiction". I might add that the debates in the New Zealand Parliament which led to the passing of the Ombudsman Bill in that country, touched upon the jurisdiction of the Ombudsman to criticize Ministers. The Attorney-General took the view that theoretically there was no provision for the Ombudsman to criticize a Ministerial decision, but if the Ombudsman were to criticize a recommendation made to a Minister, and the Minister had acted upon that recommendation, a rather obvious inference could be drawn.

In general as the objective of the complaint was to prevent the application of Federal Legislation to the Province of Alberta, I concluded that this was not a field into which the Legislative Assembly would wish to have the Ombudsman intrude.

COMPLAINTS AGAINST PRIVATE BUSINESS

68-420-23

This was a complaint involving a private business dispute and was therefore outside the jurisdiction of the Ombudsman. Some similar complaints were referred to in my last Annual Report.

As I view the position of the Ombudsman, it seems to me that where complaints are received which are outside the jurisdiction of the Ombudsman, and where he could quite properly advise the complainant that he had no jurisdiction, there is, by the very nature of the Ombudsman's Office, an inherent obligation to endeavour to place such complainants in touch with other Departments of the Provincial Government, Municipal Government, Federal Government, and on occasion, private business concerns who may possibly be in a position to assist him in the problem which concerns him. The following is such a case.

This complaint was received from a lady who was a resident of a Senior Citizens Lodge in this Province and who admits to being over 80 years of age at least. She complained that an aggressive magazine Salesman had penetrated the Lodge in which she lived despite a sign on the door which stated "Absolutely no Canvassing or Soliciting". During a period when the Matron was not immediately available, the Salesman had, according to the complainant, sold a subscription to a 92 year old lady who frankly told him that she could read, but very little.

The complainant and her roommate, also over 80 years of age, were subjected to an attempt to sell them subscriptions to two magazines for a period of twenty-four years. These two ladies were not about to be drawn into such a lengthy contract but instead settled for two contracts of 17½ years each, for the same two magazines. This example of the pioneer spirit of optimism, which made this Province great, should not be lost upon those who decry its future.

After the Salesman had departed, the complainant showed good sense in having second thoughts about the contract which she and her roommate had signed. She reported the matter to the Matron, who took steps herself to try and rectify the situation. She also wrote to me.

As mentioned before, the complaint was not one within my jurisdiction, but I did report it as I have done successfully in other cases of a similar nature, to the Director of Trades and Businesses Licensing. I also brought it to the attention of the Manager of the Canadian Central Registry of Subscription Representatives Incorporated in Toronto, who is known personally to me. This is an organization which has been set up for the self-regulation of the magazine subscription industry and with considerable success. Both took immediate action. Fortunately the publishers were also a highly respected reputable firm.

In due course I received a letter from the complainant advising me that the publishers had refunded her money to her and at the same time had advised her that the Salesman was no longer employed by them.

Even though this complaint was outside the jurisdiction of the Ombudsman, it is gratifying to be able to report the complaint as rectified.

68-460-31

The complainant is the mother of a young man who had been recently convicted of car theft and sentenced to a term of imprisonment of eighteen months in a Provincial Gaol. Shortly thereafter he was transferred to a Provincial Mental Hospital and eventually certified by Medical Certificate.

The complaint, as I received it from the complainant's mother, was a two pronged complaint. She first felt that her son should have been dealt with as a mentally ill person, and not as a criminal, and that what he required was psychiatric treatment and not a gaol sentence. Secondly, she felt that the sentence of eighteen months was entirely too long and could only worsen his condition. In addition, she was endeavoring to enter an appeal against his conviction and sentence for which purpose she required the assistance of the Legal Aid Society.

As her first complaint was against the decision of a Court of Law, it was a matter beyond my jurisdiction and I could not assist her. As to the question of his mental condition and the history of his mental condition, I undertook to endeavor to find some information concerning this background. It should be mentioned that the young man had pleaded guilty to the charge against him.

My investigation revealed a very sad state of affairs. This young man has been in constant trouble with the law over a number of years and has been sentenced to gaol on a number of occasions on numerous charges, as well as one penitentiary sentence.

At the same time he had been admitted to an Alberta Mental Hospital on five former occasions at the time of my inquiry. In fact, there had not been a year since 1963 until the date of the complaint, which was in February, 1968, that he had not spent some time in a Mental Hospital. There seems to be some pattern, that after he has committed an offense, for which he is almost always caught, he usually pleads guilty and is sentenced to a term of imprisonment. Usually during his term of imprisonment, his condition becomes such that it is necessary that he be admitted to a Mental Hospital. If, however, he recovers under treatment during the time he is in the Mental Hospital, he must, of course, be returned to the prison from whence he came.

In view of all the circumstances, my office was able to advise the complainant of the necessary procedures to make application for Legal Aid and to put her into the hands of the Legal Aid Society. Legal Aid was provided and the young man was represented by counsel at his appeal. Sentence was reduced to twelve months and at the time I concluded my file, the complainant's son was still a patient in an Alberta Hospital.

The complaint has been shown as rectified inasmuch as the Ombudsman's office was able to assist the complainant in obtaining Legal Aid to represent her son at his appeal. However, the major problem of this young man's antisocial behavior, through which he has spent a good part of his best years between prisons and Mental Hospitals, is a problem which unfortunately is beyond the statutory powers and the professional qualifications of the Ombudsman to rectify.

Appendix IV

THE OMBUDSMAN ACT 1967

Texts of Sections Referred to in Summary

2. In this Act,

(*a*) "agency" means an agency of the Government of Alberta; and includes the Workmen's Compensation Board.

11. (1) It is the function and duty of the Ombudsman to investigate any decision or recommendation made, including any recommendation made to a Minister, or any act done or omitted, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by any department or agency, or by any officer, employee or member thereof in the exercise of any power or function conferred on him by any enactment.

(2) The Ombudsman may make an investigation either on a complaint made to him by any person or of his own motion, and he may commence an investigation notwithstanding that the complaint may not on its face be against a decision, recommendation, act or omission as mentioned in subsection (1).

12. (1) Nothing in this Act authorizes the Ombudsman to investigate

(*a*) any decision, recommendation, act or omission in respect of which there is under any Act a right of appeal or objection or a right to apply for a review on the merits of the case to any court or to any tribunal constituted by or under any Act, until after that right of appeal or objection or application has been exercised in the particular case or until after the time prescribed for the exercise of that right has expired, or

(*b*) any decision, recommendation, act or omission of any person acting as a solicitor for the Crown or acting as counsel for the Crown in relation to any proceedings.

(2) If any question arises as to whether the Ombudsman has jurisdiction to investigate any case or class of cases under this Act, he may, if he thinks fit, apply to the Supreme Court of Alberta for a declaratory order determining the question.

14. (1) If in the course of the investigation of any complaint it appears to the Ombudsman

(*a*) that under the law or existing administrative practice there is an adequate remedy, other than the right to petition the Legislature, for the complainant, whether or not he has availed himself of it, or

(*b*) that, having regard to all the circumstances of the case, any further investigation is unnecessary,

he may in his discretion refuse to investigate the matter further.

(2) The Ombudsman may, in his discretion, refuse to investigate or cease to investigate any complaint

(*a*) if it relates to any decision, recommendation, act or omission of which the complainant has had knowledge for more than 12 months before the complaint is received by the Ombudsman, or

(*b*) if in his opinion,

(i) the subject matter of the complaint is trivial, or

(ii) the complaint is frivolous or vexatious or is not made in good faith, or

(iii) the complainant has not a sufficient personal interest in the subject matter of the complaint.

(3) Where the Ombudsman decides not to investigate or to cease to investigate a complaint, he shall inform the complainant of his decision and he may, if he thinks fit, state his reason therefor.

20. (1) This section applies where, after making an investigation under this Act, the Ombudsman is of opinion that the decision, recommendation, act or omission that was the subject matter of the investigation

(*a*) appears to have been contrary to law, or

(*b*) was unreasonable, unjust, oppressive, improperly discriminatory or was in accordance with a rule of law or a provision of any Act or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory, or

(*c*) was based wholly or partly on a mistake of law or fact, or

(*d*) was wrong.

(2) This section also applies where the Ombudsman is of opinion

(*a*) that in the making of the decision or recommendation, or in the doing or omission of the act, a discretionary power has been exercised

(i) for an improper purpose, or

(ii) on irrelevant grounds, or

(iii) on the taking into account of irrelevant considerations,

or

(*b*) that, in the case of a decision made in the exercise of a discretionary power, reasons should have been given for the decision.

(3) If, where this section applies, the Ombudsman is of opinion

(*a*) that the matter should be referred to the appropriate authority for further consideration, or

(*b*) that the omission should be rectified, or

(*c*) that the decision should be cancelled or varied, or

(*d*) that any practice on which the decision, recommendation, act or omission was based should be altered, or

(*e*) that any law on which the decision, recommendation, act or omission was based should be reconsidered, or

(*f*) that reasons should have been given for the decision, or

(*g*) that any other steps should be taken,

the Ombudsman shall report his opinion and his reasons therefor to the appropriate Minister and to the department or agency concerned, and may make such recommendations as he thinks fit and in that case he may request the department or agency to notify him within a specified time of the steps, if any, that it proposes to take to give effect to his recommendations.

(4) If within a reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman, in his discretion, after considering the comments, if any, made by or on behalf of the department or agency affected, may send a copy of the report and recommendations to the Lieutenant Governor in Council and may thereafter make such report to the Legislature on the matter as he thinks fit.

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(5) The Ombudsman shall attach to every report sent or made under subsection (4) a copy of any comments made by or on behalf of the department or agency concerned.

(6) Notwithstanding anything in this section, the Ombudsman shall not, in any report made under this Act, make any comment that is adverse to any person unless the person has been given an opportunity to be heard.

26. (2) The Ombudsman may, from time to time, in the public interest or in the interests of any person or department or agency publish reports relating

(*b*) to any particular case investigated by him, whether or not the matters to be dealt with in any such report have been the subject of a report to the Legislature.